164-702

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1175~~. 649 ~~258~~ 90

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED APRIL 3, 1894.

(15,559.)

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SUPREME COURT OF THE UNITED STATES.

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THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 4, 1894.

a In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

In Re M. L. COOVERT on *Habeas Corpus.*

Transcript.

1 *Ex Parte:* M. L. COOVERT.

To the honorable circuit court of the United States for the district of Washington:

Your petitioner, M. L. Coovert, complains and shows to the court as follows:

That he is a citizen and resident of the State of Washington, and that he is unjustly and unlawfully detained and imprisoned by George Nerton, sheriff of the county of Clarke, State of Washington, at Vancouver, in the county of Clarke and State of Washington, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of Washington for Clarke county, under the following circumstances:

Your petitioner is a citizen of the United States and so was at the time of his arrest, and was and is a citizen of the State of Washington, and at the time of the grievance herein complained of was and is engaged in the business of a retail tobacco dealer in the city of Vancouver, county of Clarke and State of Washington.

That while so engaged in conducting his business as said retail tobacco dealer he was on the ninth day of June, 1893, arrested by the sheriff of Clarke county, State of Washington, one George Nerton, by the order of and upon a warrant issued by the Honorable E. A. Wiswall, sitting and acting as judge of the superior court of the State of Washington for the county of Clarke, a copy of which warrant is hereto attached, marked "Exhibit No. 1," and which your petitioner prays may be considered as a part of this petition the same as if it was expressly incorporated in it, and

2 he ever since has been kept in confinement and under arrest and now is under arrest as aforesaid and restrained of his liberty upon the following charges, violation of the following law of the State of Washington:

"SECTION 1. That it shall be unlawful for any person or persons whatsoever to manufacture, buy, sell, give or furnish to any one cigarettes, cigarette paper or cigarette wrapper.

"SEC. 2. That whosoever manufactures, buys, sells, gives or furnishes to any person or persons cigarettes, cigarette paper or cigarette wrapper shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned in jail not exceeding six months, or both, for each offense.

"SEC. 3. This act shall be liberally construed to the end that its object shall be enforced.

"SEC. 4. All laws or parts of laws in conflict with the provisions of this act are hereby repealed."

And upon the affidavit, of which a copy is hereto attached and marked as "Exhibit No. 2," and which your petitioner expressly makes a part of this petition the same as if incorporated in it, and prays that it may be so considered.

And that immediately upon the arrest of your petitioner he was taken before the said Honorable E. A. Wiswall, sitting and acting as judge of the superior court as aforesaid and as a committing magistrate; that before said magistrate testimony was given by C. L. MacDonald and G.W. Stapleton as follows: That your petitioner had sold to C. L. MacDonald a package of cigarettes marked "Vanity Fair," being ten paper-wrapped cigarettes enclosed in a paste-
3 board slide box, having upon it the name of the manufacturer, brand of cigarettes, number of manufacturing district and State, and number of cigarettes, with the caution notice required by the laws of the United States printed on the side of said box and the United States internal revenue stamp for ten cigarettes pasted across the end of said box so as to act as a seal; and the said package so sold by your petitioner was produced before the committing magistrate as evidence and is herewith produced as "Exhibit No. 3" of this petition.

The aforesaid facts your petitioner admits to be true. The said cigarettes were sold in Oregon to your petitioner by the American Tobacco Company, doing business in the State of New York, and said cigarettes were manufactured in New York and were not shipped to your petitioner in pasteboard boxes containing similar packages to said "Exhibit 3."

But the said package was, with one hundred and forty-nine other such packages, shipped to your petitioner by said American Tobacco Company from the State of Oregon, enclosed in a common pine shipping case, only being merely a packing case for the protection and safety of the goods in transportation, and that heretofore, to wit, April 6, 1893, the honorable the Commissioner of Internal Revenue of the United States decided that such a package as said "Exhibit 3," containing a statutory quantity of cigarettes and properly stamped and cancelled and bearing the caution label and number of the manufacturing district and State and the number of cigarettes contained therein, was an original package as contemplated by United States law and regulations, and that the repacking of said packages in additional coverings of wood, paper, etc., was optional with the manufacturer. A true copy of the letter of said Commissioner, announcing such decision, is hereto attached
4 as "Exhibit No. 5," which your petitioner prays may be considered as a part of this petition to the same effect as if incorporated in it.

That your petitioner is advised by counsel learned in the law that his detention is unlawful, as being in contravention of the constitutional provision of the United States contained in the fourteenth amendment to the Constitution of the United States, section 1; that said detention is also unlawful, as being in contravention of article 1, section 8, of the Constitution of the United States, and that said law under which your petitioner was arrested and is now detained

is invalid, as contrary to the provisions of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and deprives your petitioner of liberty and property without due process of law, and also that its effect is to prohibit and regulate commerce among the several States.

And your petitioner claims that said law is invalid in the premises and that he is held without jurisdiction or authority.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said George Nerton, sheriff of the county of Clarke, in the State of Washington, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require.

M. L. COOVERT, *Petitioner.*

C. E. S. WOOD,
Solicitor for Petitioner, of
Williams & Wood, Portland, Oregon.

5 UNITED STATES OF AMERICA, }
District of Washington, } ss:

I, M. L. Coovert, being first duly sworn, depose and say that I am the petitioner named in the foregoing petition; that it has been subscribed by me and I have read the same and know the contents thereof, and that all the statements therein made are true, as I verily believe.

M. L. COOVERT.

Subscribed and sworn to before me this 10 day of June, 1893.
[SEAL.] H. R. CAPLES,
County Clerk and Clerk of the Superior Court,
Clarke County, Washington.

6 EXHIBIT No. 5.

B. H. C. TREASURY DEPARTMENT, H. C. R.
V. E. W. OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

In correspondence on this subject quote the above initials.

WASHINGTON, D. C., *April* 6, 1893.

American Tobacco Company, No. 45 Broadway, New York, N. Y.

GENTLEMEN: In reply to your inquiry of April 3d, submitted a sample package of cigarettes bearing thereon the internal revenue stamp and the printed marks and caution label and inquiring as to the necessity for a re-enclosing in an additional covering of paper, wood, or other material in placing the same upon the market, you are notified that said package, being a statutory quantity and properly stamped and cancelled and bearing thereon the caution label and the number of the manufactory, the district, and State and the number of cigarettes contained therein, meets with the approval of this bureau, being a proper and original package as contemplated by existing law and regulations.

Therefore the repacking of said packages in additional coverings of wood, paper, etc., is optional with the manufacturer and does not concern this bureau. This option is permissible under existing regulations, series 7, No. 8, Revised —, page 46, and Internal Revenue Record, vol. 32, page 365, dated November 22, 1886.

Respectfully yours,

(Signed) JOHN W. MASON,
Commissioner.

7 EXHIBIT No. 1.

Committment.

STATE OF WASHINGTON, } ss:
County of Clarke, }

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county charged on the oath of C. D. Bowles with having, on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes, and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of $250.00 *dollars* for his appearance to answer at the next session of the superior court as required by the court: Therefore, in the name of the State of Washington, you, the sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court.*

8 EXHIBIT No. 2.

STATE OF WASHINGTON, } ss:
County of Clarke, }

I, C. D. Bowles, first being duly sworn according to law, depose and say as follows:

I accuse M. L. Coovert, of Vancouver, Clarke county, State of Washington, of the crime of selling and furnishing cigarettes, contrary to the statute in such cases made and provided, committed as follows: Said M. L. Coovert is a retail tobacco dealer doing business in Vancouver, county of Clarke, State of Washington, and on Friday, June the 9th, 1893, at his said place of business, in said city of Vancouver, the said M. L. Coovert did sell and furnish to one C. L. McDonald one package of cigarettes, more particularly described as follows:

A slide pastboard box containing ten paper wrapped cigarettes and marked "Vanity Fair cigarettes" and having upon it the

statutory caution notice and the U. S. revenue stamp, duly cancelled, and the number of manufacturing district and State, which said package of cigarettes was and is of the value of five cents.

C. D. BOWLES.

Subscribed and sworn to before me this 9th day of June, 1893.

H. R. CAPLES,
County Clerk.

Endorsed: Petition for a writ of *habeas corpus.* Filed June 12, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

9 *Petition for Writ of Habeas Corpus.*

In the Circuit Court of the United States, Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Now comes Geo. Nerton, sheriff of the county of Clarke, State of Washington, by his attorney, C. D. Bowles, and demurs to the petition filed in the above-entitled cause for the following reason, to wit:

That the facts set forth in said petition do not state facts sufficient to constitute a cause for the relief prayed for, to wit, the issuance of a writ of *habeas corpus.*

C. D. BOWLES,
Attorney for Geo. Nerton and Prosecuting Attorney for the State of Washington for the County of Clarke.

UNITED STATES OF AMERICA, }
District of Washington, } *ss:*

I, C. D. Bowles, do hereby certify that I am a regularly admitted and practicing attorney in the circuit court of the United States for the district of Washington, and I have examined the demurrer herein set forth and that the same is well founded in point of law.

C. D. BOWLES.

Endorsed: Demurrer. Filed June 13, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

10 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

In Re M. L. COOVERT on *Habeas Corpus.* # 275.

Now, on this day, this cause comes on regularly to be heard upon the petition of M. L. Coovert for a writ of *habeas corpus,* and, the court having duly considered the petition and the argument of C. E. S. Wood, Esq., counsel for petitioner, and of C. D. Bowles, Esq., counsel for George Nerton, sheriff, and being now sufficiently advised, it is ordered that said petition be, and the same is hereby,

granted, and the clerk of this court is directed to issue a writ of *habeas corpus*, addressed to George Nerton, sheriff of the county of Clarke, State of Washington, returnable at Seattle June 22, 1893, at the hour of ten o'clock a. m.

11 *Petition for Writ of Habeas Corpus.*

In the Circuit Court of the United States for the District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

It is hereby stipulated and agreed by and between C. E. S. Wood, Esq., solicitor for petitioner, M. L. Coovert, and C. D. Bowles, Esq., solicitor for George Nerton, sheriff, that the dimensions of the pine box from which the package of cigarettes attached to the petition in this case as "Exhibit No. —" was of the following dimensions, to wit, 16 inches long, 10 inches wide, 4 inches deep, and that said pine box was opened by the petitioner prior to the sale of said package to the said C. L. McDonald, but said package of ten cigarettes was not opened or smoked on the premises, and it is further agreed that the said statement herein contained shall be made a part of the petition herein and considered as a part of the agreed statement of facts in this case.

C. E. S. WOOD,
Solicitor for Petitioner.
C. D. BOWLES,
Solicitor for George Nerton, Sheriff.

Endorsed: Stipulation. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

12 *Petition for Writ of Habeas Corpus.*

In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Now comes M. L. Coovert, petitioner, by C. E. S. Wood, his solicitor, and on the return of the sheriff to the writ moves the court for an order discharging the petitioner.

C. E. S. WOOD,
Solicitor for M. L. Coovert.

Endorsed: Motion to discharge petition. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

13 *Petition for Habeas Corpus; Return to the Writ.*

In the Circuit Court of the United States for the District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

To the circuit court of the United States for the district of Washington:

George Nerton, sheriff of Clarke county, State of Washington, to whom the within writ is directed, has now and here before the court the body of M. L. Coovert, therein named, as thereby commanded; and I, the said George Nerton, do hereby certify that the cause of the arrest and detention of said M. L. Coovert is a warrant of commitment to me directed, issued by the Honorable E. A. Wiswall, judge of the superior court for the State of Washington, in the county of Clarke, sitting as committing magistrate, a copy of which warrant of commitment is hereto annexed, marked Exhibit No. 1, and made a part hereof; which said warrant was issued in the manner and under the facts and circumstances and for the purpose set forth in the petition of the said M. L. Coovert herein.

GEO. NERTON,
Sheriff of Clarke County, State of Washington.

14 STATE OF WASHINGTON, } ss:
County of Clarke, }

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county, charged, on the oath of C. D. Bowles, with having on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes; and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of — dollars for his appearance to answer at the next session of the superior court, as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court.*

15 UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

In the Matter of M. L. COOVERT on *Habeas Corpus.*

The President of the United States of America to George Nerton sheriff of the county of Clarke, Washington, Greeting:

You are hereby commanded that you have the body of M. L. Coovert, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the ninth judicial circuit, district of Washington, at the court-room of said court, in the city of Seattle, on the 22nd day of June, 1893, at 10 o'clock a. m, to do and receive what shall then be considered in the premises; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the 117th.

A. REEVES AYRES, *Clerk*,

[SEAL.] By R. M. HOPKINS,
Deputy Clerk.

Endorsed: Writ of *habeas corpus* and return thereto. Filed on return, this 22d day of June, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

16 *Petition for Writ of Habeas Corpus.*

In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Now, at this time, comes on this cause to be heard upon the petition of M. L. Coovert, duly filed in this court, praying for the issuance of the writ of *habeas corpus.*

And upon the demurrer to said petition, duly filed by George Nerton, sheriff of Clarke county, Washington, and upon the evidence and exhibits submitted with said petition, and upon the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893, and upon the return of George Nerton, sheriff of Clarke county, State of Washington, to said writ; and the motion to discharge the petitioner and the body of M. L. Coovert in the foregoing writ of *habeas corpus* mentioned being brought before the court at the time and the place in said writ named, and the return thereto being read, and the petitioner appearing by Mr. C. E. S. Wood, his solicitor, and moving the court for his discharge, and the sheriff of Clarke county, George Nerton, appearing by C. D. Bowles, his solicitor, and the court having considered the said petition and

demurrer thereto, the exhibits, the writ of *habeas corpus* and the return thereto, and the motion to discharge the petitioner, and having heard the argument in the premises and being fully advised, and it appearing to the court that the facts and circumstances are not sufficient to justify the imprisonment of the said M. L. Coovert and no sufficient cause for the detention of the said M. L. Coovert appearing, it is hereby—

17 Ordered, adjudged, and decreed that the said law of the State of Washington prohibiting the sale of cigarettes and referred to in the petition is in contravention of article 1 of section 8 of the Constitution of the United States and null and void in so far as it prohibits or attempts to prohibit the selling, giving, or furnishing to any one by the importer of a slide pasteboard box containing ten paper-wrapped cigarettes, said box having upon it the U. S. internal revenue stamp and caution notice required by law, also number of manufacturer's district and State, which box was received by the importer from without the State of Washington, enclosed with other similar boxes in a common pine shipping case, and that the said M. L. Coovert be by said George Nerton, sheriff of Clarke county, forthwith discharged from imprisonment and detention for the cause as in said petition aforesaid.

And it is further ordered, adjudged, and decreed that the said M. L. Coovert, petitioner, shall enter into a recognizance in the sum of two hundred and fifty ($250.00) dollars with the clerk of this court, with one or more sureties, for his appearance to answer the judgment of the appellate court in the premises.

C. H. HANFORD, *Judge.*

Dated this 22nd day of June, 1893.

Endorsed: Judgment. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

18 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. Coovert for a Writ of *Habeas Corpus*. } Petition on Appeal.

Comes now the State of Washington, by the attorney general, and, considering itself aggrieved by the order of the above-entitled court in the above-entitled proceeding, of date June 22nd, 1893, discharging the said M. L. Coovert from the custody of the sheriff of Clarke county upon the writ of *habeas corpus* heretofore sued out by him, doth hereby appeal from the said order of said court heretofore made, as aforesaid, to the Supreme Court of the United States, and prays that this appeal be allowed, and that a transcript of all the proceedings and papers upon which said order was made, duly authenticated, may be transmitted to the said Supreme Court of the United States.

W. C. JONES,
Attorney General for the State of Washington.

Dated this 23 day of June, 1893.

19 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. COOVERT for a Writ of *Habeas Corpus.* } Order on Appeal.

Now, on this 23rd day of June, A. D. 1893, comes the State of Washington, by W. C. Jones, Esquire, attorney general for said State, and prays that an appeal may be allowed to the Supreme Court of the United States from the order heretofore made in this court in the above-entitled cause on the 22nd day of June, A. D. 1893, discharging one M. L. Coovert from the custody of the sheriff of the county of Clarke, State of Washington, and that all the papers, proceedings, and documents relating to said cause may be transmitted by copy thereof, duly authenticated, to the Supreme Court of the United States next to be holden.

And the court, being fully advised in the premises, and the said M. L. Coovert appearing in open court by J. C. Flanders, Esquire, his attorney—

It is ordered that said appeal be, and the same is hereby, allowed.

Further ordered that certified copies, duly authenticated, of all papers, documents, and proceedings in said cause be transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on said appeal be fixed at the sum of — dollars.

Done in open court this 23rd day of June, A. D. 1893.

C. H. HANFORD,
District Judge, Presiding in said Circuit Court.

20 Endorsed: Order on appeal. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

21 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Proceeding of M. L. COOVERT for a Writ of *Habeas Corpus.* } Order Fixing Bond.

Now, on this day, this cause coming on to be heard upon the application of the State of Washington to fix the bond on appeal to the Supreme Court of the United States in each of the proceedings in this court entitled as above, and it appearing to the court that the parties to the said proceedings are in all cases the same, and that the acts charged in each of said proceedings is an alleged violation of the same law of the State of Washington, it is ordered that the said State of Washington execute to the said M. L. Coovert one bond, to secure the costs to said M. L. Coovert in all of said proceedings, in the sum of five hundred (500) dollars.

Done in open court this 23rd day of June, 1893.

C. H. HANFORD, *Judge.*

Endorsed: Order fixing bond. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

22 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Proceeding of M. L. COOVERT for a Writ of *Habeas Corpus*.

Bond on Appeal.

Know all men by these presents that we, Geo. D. Shannon and L. R. Grimes, are held and firmly bound unto M. L. Coovert in the full and just sum of five hundred (500) dollars, to be paid to the said M. L. Coovert, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Sealed with our seals and dated this 24th day of June, 1893.

The condition of the foregoing obligation is such that whereas the said M. L. Coovert was heretofore, by virtue of the laws of the State of Washington, arrested and charged with the violation of a law of said State prohibiting the sale of cigarettes therein on eight separate and distinct charges; and whereas lately, at a term of the above-entitled court duly held in the city of Seattle, the said M. L. Coovert was in each of said proceedings discharged from the custody of the authorities of the State of Washington upon writs of *habeas corpus* duly issued by the judge of the above-entitled court in each of the said proceedings; and whereas the State of Washington, considering itself aggrieved by the action aforesaid

23 in discharging said M. L. Coovert from the custody of the authorities of the State of Washington, has appealed from the judgment and action of the said court in each of said proceedings to the Supreme Court of the United States and its appeal has been duly allowed by the judge of said court; and whereas, in open court, upon the 23d day of June, 1893, it was duly ordered and directed that the said State of Washington should execute a bond in the sum of five hundred (500) dollars to the said M. L. Coovert to secure the costs of said appeal to the said M. L. Coovert:

Now, therefore, if the said State of Washington shall duly prosecute the appeal in each of said causes to effect, and if it fail to make its plea good in any of said causes shall answer all costs therein, then this obligation to be void; otherwise to remain in full force and effect.

GEO. D. SHANNON.
L. R. GRIMES.

STATE OF WASHINGTON, } ss:
County of Thurston, }

Geo. D. Shannon and L. R. Grimes, being first duly sworn, each for himself deposes and says that he is one of the sureties named in and who executed the foregoing bond; that he is a resident of the State of Washington and worth double the amount specified in

the foregoing bond over and above his just debts and liabilities and exclusive of property exempt from execution.

GEO. D. SHANNON.
L. R. GRIMES.

Subscribed and sworn to before me this 24th June, A. D. 1893.

BRAD. W. DAVIS,

24 [SEAL.] *Notary Public, Residing at Olympia.*

Endorsed: Bond on appeal. Filed July 3, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

25 In the Circuit Court of the United States for the Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT. } No. 275. On Petition for Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

Know all men by these presents that we, M. L. Coovert, of Vancouver, in the State of Washington, as principal, and G. H. Heilbron, of Seattle, in the State of Washington, as surety, are held and firmly bound unto the clerk of the circuit court of the United States for the district of Washington in the penal sum of two hundred and fifty ($250) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Signed by our hands and sealed with our seals this 31 day of July, A. D. 1893.

The condition of the foregoing obligation is such that whereas the said M. L. Coovert, principal above named, was on the 9th day of June, 1893, arrested by George Nerton, sheriff of the county of Clarke, in said State, at Vancouver, in said county and State, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of the State of Washington for said county of Clarke, sitting and acting as a committing magistrate, for an alleged violation by the said Coovert of a certain law of the State of Washington declaring it to be unlawful for any person or persons

26 whatever to manufacture, buy, sell, give, or furnish to any one any cigarettes, cigarette paper, or cigarette wrapper, it being charged that the said Coovert had sold to one C. M. McDonald a package of cigarettes, consisting of a slide pasteboard box containing ten paper-wrapped cigarettes, which said package was imported with other similar boxes in a common pine shipping case, which said package was shipped to the said Coovert by the American Tobacco Company from the State of Oregon to the State of Washington, all as more particularly set forth in the petition of the

said M. L. Coovert, heretofore filed herein, for a writ of *habeas corpus;* and

Whereas, on the 22nd day of June, 1893, said cause was duly heard in this court on a demurrer to the petition and on the return to the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893; and

Whereas, in said cause, on the 22nd day of June, 1893, an order was duly made and entered discharging the said M. L. Coovert from the detention and imprisonment complained of in said petition as aforesaid; and

Whereas by said order of the 22nd day of June, 1893, it was ordered and required that the said M. L. Coovert should enter into a bond in the sum of two hundred and fifty ($250.00) dollars, with one or more sureties, for his appearance to answer the judgment of the appellate court herein:

Now, therefore, if the said M. L. Coovert shall appear and answer the judgment of the appellate court in the premises and abide by and obey such judgment or order as the appellate court may render or make or cause to be rendered or made by the circuit court of the United States above named, then this obligation to be void; otherwise to remain in full force and virtue.

27

M. L. COOVERT. [SEAL.]
G. H. HEILBRON. [SEAL.]

Signed, sealed, & delivered in presence of—
L. B. STEDMAN.

Taken and acknowledged before me this 31 day of July, 1893.
R. M. HOPKINS,
Deputy Clerk U. S. Circuit Court, District of Washington.

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

G. H. Heilbron, being first duly sworn, deposes and says that he is the surety named in the foregoing bond; that he is not a sheriff, clerk of court, attorney-at-law, or any other officer of any court in the State of Washington; that he is a citizen, resident, and freeholder in said State of Washington, and is worth at least the sum of two hundred and fifty ($250) dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.
G. H. HEILBRON.

Subscribed and sworn to before me this 31 day of July, 1893.
L. B. STEDMAN,
Notary Public in and for the State of Washington,
Residing at Seattle, King County, in said State.

Endorsed: Bond. Filed Jul- 31, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

28 *Præcipe for Appearance.*

United States Circuit Court for the District of Washington.

In Re M. L. COOVERT, *Habeas Corpus.*

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor for petitioner in the above-entitled cause.

C. E. S. WOOD, *Solicitor,*
Of Williams & Wood, Att'ys.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

29 *Præcipe for Appearance.*

United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

To the clerk of the above-entitled court:

You will please enter my appearance as attorney for Geo. Nerton, sheriff, in the above-entitled cause.

C. D. BOWLES,
Pros. Att'y for the State of Washington, Clarke County, and Attorney for Geo. Nerton, Sheriff.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

30 *Præcipe for Appearance.*

United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

To the clerk of the above-entitled court:

You will please enter my appearance as counsel & solicitor for appellant in the above-entitled cause.

W. C. JONES, *Att'y Gen'l.*

Endorsed: Præcipe for appearance. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

31 In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

Ex Parte: M. L. COOVERT on *Habeas Corpus.*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, ninth judicial circuit, do hereby certify the foregoing thirty typewritten pages, numbered from one to thirty, inclusive, to be a full, true, and correct copy of the record

and of all the proceedings had in the above and therein entitled cause, and that the same constitutes the transcript of the record upon appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 31st day of July, A. D. 1893.

{ Seal United States Circuit Court, District Washington, Northern Division. }

A. REEVES AYRES,
Clerk U. S. Circuit Court for the District of Washington,
By R. M. HOPKINS,
Deputy Clerk.

Endorsed on cover: Case No. 15,559. Washington C. C. U. S. Term No., 1175. The State of Washington, appellant, *vs.* M. L. Coovert. Filed April 3d, 1894.

164-702

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1176~~. ~~680~~ ~~559~~ 91

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED APRIL 3, 1894.

(15,560.)

(15,560.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1176.

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 4, 1894.

a In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

In Re M. L. COOVERT on *Habeas Corpus.*

Transcript.

1 To the honorable circuit court of the United States for the district of Washington:

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Your petitioner, M. L. Coovert, complains and shows the court as follows:

That he is a citizen and resident of the State of Washington, and that he is unjustly and unlawfully detained and imprisoned by George Nerton, sheriff of the county of Clarke, State of Washington, at Vancouver, in the county of Clarke and State of Washington, by virtue of a warrant of committment issued by E. A. Wiswall, judge of the superior court of Washington for Clarke county, under the following circumstances:

Your petitioner is a citizen of the United States and so was at the time of his arrest, and was and is a citizen of the State of Washington, and at the time of the grievance herein complained of was and is engaged in the business of a retail tobacco dealer in the city of Vancouver, county of Clarke and State of Washington.

That while so engaged in conducting his business as said retail tobacco dealer he was on the ninth day of June, 1893, arrested by the sheriff of Clarke county, State of Washington, one George Nerton, by the order of and upon a warrant issued by the Honorable E. A. Wiswall, sitting and acting as judge of the superior court of the State of Washington for the county of Clarke, a copy of which warrant is hereto attached, marked "Exhibit No. 1," and which your petitioner prays may be considered as a part of this petition the same as if it was expressly incorporated in it, and

2 he ever since has been kept in confinement and under arrest and now is under arrest as aforesaid and restrained of his liberty upon the following charges, violation of the following law of the State of Washington:

"SECTION 1. That it shall be unlawful for any person or persons whatever to manufacture, buy, sell, give or furnish to any one cigarettes, cigarette paper or cigarette wrapper.

"SEC. 2. That whosoever manufactures, buys, sells, gives or furnishes to any person or persons cigarettes, cigarette paper or cigarette wrapper shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned in jail not exceeding six months, or both, for each offense.

"SEC. 3. This act shall be liberally construed to the end that its object shall be enforced.

"SEC. 4. All laws or parts of laws in conflict with the provisions of this act are hereby repealed."

And upon the affidavit, of which a copy is hereto attached and marked as "Exhibit No. 2," and which your petitioner expressly makes a part of this petition the same as if incorporated in it, and prays that it may be so considered.

And that immediately upon the arrest of your petitioner he was taken before the said Honorable E. A. Wiswall, sitting and acting as judge of the superior court as aforesaid and as a committing magistrate; that before said magistrate testimony was given by C. R. MacDonald and E.W. Stapleton as follows: That your petitioner had sold to C. L. MacDonald a package of cigarettes marked Duke's Cameo cigarettes, being *in* ten paper-wrapped cigarettes en-
3 closed in a slide pasteboard box, with the name of the manufacturer, brand of cigarettes, and number of manufacturing district and State printed on it, and number of cigarettes, with the caution notice required by the laws of the United States printed on the side of said box and the United States internal revenue stamp for ten cigarettes pasted across the end of said box, and the said package so sold by your petitioner was produced before the committing magistrate as evidence and is herewith produced as "Exhibit No. 3" of this petition.

The aforesaid facts your petitioner admits to be true. The said cigarettes were consigned from Oregon for sale on commission to your petitioner by the American Tobacco Company, doing business in the State of New York, and said cigarettes were manufactured in North Carolina, and were shipped to your petitioner in pasteboard boxes containing fifty such packages exactly similar to said "Exhibit 3." That said pasteboard boxes are called "cartons" by the trade, and are used simply for the purpose of making convenient parcels of the packages of cigarettes for enumeration and handling at the factory, and to protect the cigarette packages when in storage, and one of such "cartons" is herewith produced as "Exhibit No. 4" of this petition, and is more particularly described as follows: A loose top unsealed box with the name of manufacturer and brand of cigarettes printed upon it. Such cartons are of no invariable size, but are and will be made in any size desired by dealers for shipment to them.

That said cartons were shipped to your petitioner by said American Tobacco Company from the State of Oregon, enclosed in common pine shipping cases, being merely packing cases for the protection and safety of the goods in transportation, and that
4 heretofore, to wit, April 6, 1893, the honorable the Commissioner of Internal Revenue for the United States decided that such a package as said "Exhibit 3," containing a statutory quantity of cigarettes and properly stamped and cancelled and bearing the caution label and number of the manufacturing district and State and the number of cigarettes contained therein, was an original package as contemplated by United States law and regulations, and that the repacking of said packages in additional coverings of wood, paper, etc., was optional with the manufacturer. A true copy

of the letter of said Commissioner, announcing such decision, is hereto attached as "Exhibit No. 5," which your petitioner prays may be considered as a part of this petition to the same effect as if incorporated in it.

That your petitioner is advised by counsel learned in the law that his detention is unlawful, as being in contravention of the constitutional provision of the United States contained in the fourteenth amendment to the Constitution of the United States, section 1; that said detention is also unlawful, as being in contravention of article 1, section 8, of the Constitution of the United States, and that said law under which your petitioner was arrested and is now detained is invalid, as contrary to the provisions of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and deprives your petitioner of liberty and property without due process of law, and also that its effect is to prohibit and regulate commerce among the several States.

And your petitioner claims that said law is invalid in the premises and that he is held without jurisdiction or authority.

5 Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said George Nerton, sheriff of the county of Clarke, in the State of Washington, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require.

M. L. COOVERT, *Petitioner.*

C. E. S. WOOD,
Solicitor for Petitioner, of
Williams & Wood, Att'ys.

UNITED STATES OF AMERICA, }
District of Washington, } ss:

I, M. L. Coovert, being first duly sworn, depose and say that I am the petitioner named in the foregoing petition; that it has been subscribed by me and I have read the same and know the contents thereof, and that all the statements therein made are true, as I verily believe.

M. L. COOVERT.

Subscribed and sworn to before me this 10th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court,*
Clarke County, Washington.

6 EXHIBIT No. 1.

STATE OF WASHINGTON, }
County of Clarke, } ss:

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county charged on the oath

of C. D. Bowles with having, on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes, and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of $250.00 *dollars* for his appearance to answer at the next session of the superior court as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,
County Clerk and Clerk of the Superior Court.

7 EXHIBIT No. 5.

B. H. C. TREASURY DEPARTMENT, H. C. R.
V. E. OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

In correspondence on this subject quote the above initials.

WASHINGTON, D. C., *April* 6, 1893.

American Tobacco Company, No. 45 Broadway, New York, N. Y.

GENTLEMEN: In reply to your inquiry of April 3d, submitting a sample package of cigarettes bearing thereon the internal revenue stamp and the printed marks and caution label and inquiring as to the necessity for a re-enclosing in an additional covering of paper, wood, or other material in placing the same upon the market, you are notified that said package, being a statutory quantity and properly stamped and cancelled and bearing thereon the caution label and the number of the manufactory, the district, and State and the number of cigarettes contained therein, meets with the approval of this bureau, being a proper and original package as contemplated by existing law and regulations.

Therefore the repacking of said packages in additional coverings of wood, paper, etc., is optional with the manufacturer and does not concern this bureau. This option is permissible under existing regulations, series 7, No. 8, Revised —, page 46, and Internal Revenue Record, vol. 32, page 365, dated November 22, 1886.

Respectfully yours,
(Signed) JOHN W. MASON,
Commissioner.

8 EXHIBIT No. 2.

STATE OF WASHINGTON, } ss:
County of Clarke, }

I, C. D. Bowles, first being duly sworn according to law, depose and say as follows:

I accuse M. L. Coovert, of Vancouver, Clarke county, State of Washington, of the crime of selling and furnishing cigarettes, con-

trary to the statute in such cases made and provided, committed as follows: Said M. L. Coovert is a retail tobacco dealer doing business in Vancouver, county of Clarke, State of Washington, and on Friday, June the 9th, 1893, at his said place of business, in said city of Vancouver, the said M. L. Coovert did sell and furnish to one C. L. McDonald one package of cigarettes, more particularly described as follows:

A slide pasteboard box containing ten paper-wrapped cigarettes; on said box is the name of the manufacturer and brand of cigarettrs; also the statutory caution notice, number of manufacturing district and State, and the U. S. revenue stamp cancelled, which said package of cigarettes was and is of the value of five cents.

C. D. BOWLES.

Subscribed and sworn to before me this 9th day of June, 1893.

H. R. CAPLES,
County Clerk.

Endorsed: Petition for a writ of *habeas corpus.* Filed June 12, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

9 In the Circuit Court of the United States, Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes Geo. Nerton, sheriff of the county of Clarke, State of Washington, by his attorney, C. D. Bowles, and demurs to the petition filed in the above-entitled cause for the following reason, to wit:

That the facts set forth in said petition do not state facts sufficient to constitute a cause for the relief prayed for, to wit, the issuance of a writ of *habeas corpus.*

C. D. BOWLES,
Attorney for Geo. Nerton and Prosecuting Attorney of the State of Washington for the County of Clarke.

UNITED STATES OF AMERICA, }
District of Washington, } *ss:*

I, C. D. Bowles, do hereby certify that I am a regularly admitted and practicing attorney in the circuit court of the United States for the district of Washington, and I have examined the demurrer herein set forth and that the same is well founded in point of law.

C. D. BOWLES.

Endorsed: Demurrer. Filed June 13, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

10 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

In Re M. L. COOVERT on *Habeas Corpus.* #276.

Now, on this day, this cause comes on regularly to be heard upon the petition of M. L. Coovert for a writ of *habeas corpus*, and, the court having duly considered the petition and the argument of C. E. S. Wood, Esq., counsel for petitioner, and of C. D. Bowles, Esq., counsel for George Nerton, sheriff, and being now sufficiently advised, it is ordered that said petition be, and the same is hereby, granted, and the clerk of this court is directed to issue a writ of *habeas corpus*, addressed to George Nerton, sheriff of the county of Clarke, State of Washington, returnable at Seattle June 22, 1893, at the hour of ten o'clock a. m.

11 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes M. L. Coovert, by C. E. S. Wood, his solicitor, and on the return of the sheriff to the writ moves the court for an order discharging the petitioner.

C. E. S. WOOD,
Solicitor for M. L. Coovert.

Endorsed: Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

12 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now, at this time, comes on this cause to be heard upon the petition of M. L. Coovert, duly filed in this court, praying for the issuance of the writ of *habeas corpus.*

And upon the demurrer to said petition, duly filed by George Nerton, sheriff of Clarke county, Washington, and upon the evidence and exhibits submitted with said petition, and upon the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893, and upon the return of George Nerton, sheriff of Clarke county, State of Washington, to said writ; and the motion to discharge the petitioner and the body of M. L. Coovert in the foregoing writ of *habeas corpus* mentioned being brought before the court at the time and the place in said writ named, and the return thereto being read, and the petitioner appearing by Mr. C. E. S.

Wood, his solicitor, and moving the court for his discharge, and the sheriff of Clarke county, George Nerton, appearing by C. D. Bowles, his solicitor, and the court having considered the said petition and demurrer thereto, the exhibits, the writ of *habeas corpus* and the return thereto, and the motion to discharge the petitioner, and having heard the argument in the premises and being fully advised, and it appearing to the court that the facts and circumstances are not sufficient to justify the imprisonment of the said M. L. Coovert and no sufficient cause for the detention of the said M. L. Coovert appearing, it is hereby—

Ordered, adjudged, and decreed that the said law of the State of Washington prohibiting the sale of cigarettes and referred
13 to in the petition is in contravention of article 1 of section 8 of the Constitution of the United States and null and void in so far as it prohibits or attempts to prohibit the selling, giving, or furnishing to any one by the importer of a slide pasteboard box containing ten paper-wrapped cigarettes, said box having upon it the U. S. internal revenue stamp and caution notice required by law, also number of manufacturer's district and State, which box was received by the importer for sale on commission from without the State of Washington, packed with other similar boxes in a loose top unsealed pasteboard box or carton, and said carton packed with others in a common pine shipping case, and that the said M. L. Coovert be by said George Nerton, sheriff of Clarke county, forthwith discharged from imprisonment and detention for the cause as in said petition aforesaid.

And it is further ordered, adjudged, and decreed that the said M. L. Coovert, petitioner, shall enter into a recognizance in the sum of two hundred and fifty ($250.00) dollars with the clerk of this court, with one or more sureties, for his appearance to answer the judgment of the appellate court in the premises.

C. H. HANFORD, *Judge.*

Dated this 22nd day of June, 1893.

Endorsed: Judgment. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

14 In the Circuit Court of the United States for the District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Habeas Corpus; Return to the Writ.

To the circuit court of the United States for the district of Washington:

George Nerton, sheriff of Clarke county, State of Washington, to whom the within writ is directed, has now and here before the court the body of M. L. Coovert, therein named, as thereby commanded; and I, the said George Nerton, do hereby certify that the cause of

the arrest and detention of said M. L. Coovert is a warrant of committment to me directed, issued by the Honorable E. A. Wiswall, judge of the superior court for the State of Washington, in the county of Clarke, sitting as committing magistrate, a copy of which warrant of committment is hereto annexed, marked Exhibit No. 1, and made a part hereof; which said warrant was issued in the manner and under the facts and circumstances and for the purpose set forth in the petition of the said M. L. Coovert herein.

GEO. NERTON,
Sheriff of Clarke County, State of Washington.

15 STATE OF WASHINGTON, } ss:
County of Clarke, }

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county, charged, on the oath of C. D. Bowles, with having on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes; and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of — dollars for his appearance to answer at the next session of the superior court, as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and the seal of said court this 9th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court.*

16 UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

In the Matter of M. L. COOVERT on *Habeas Corpus.*

The President of the United States of America to George Nerton, sheriff of the county of Clarke, Washington, Greeting:

You are hereby commanded that you have the body of M. L. Coovert, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the ninth judicial circuit, district of Washington, at the court-room of said court, in the city of Seattle, on the 22nd day of June, 1893, at 10 o'clock a. m., to do and receive what shall then be considered in the premises; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the 117th.

A. REEVES AYRES, *Clerk*,
[SEAL.] By R. M. HOPKINS,
Deputy Clerk.

Endorsed: Writ of *habeas corpus* and return thereto. Filed on return, this 22nd day of June, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

17 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. COOVERT for a Writ of *Habeas Corpus*. } Petition on Appeal.

Comes now the State of Washington, by the attorney general, and, considering itself aggrieved by the order of the above-entitled court in the above-entitled premises, of date June 22nd, 1893, discharging the said M. L. Coovert from the custody of the sheriff of Clarke county upon the writ of *habeas corpus* heretofore sued out by him, doth hereby appeal from the said order of said court heretofore made, as aforesaid, to the Supreme Court of the United States, and prays that this appeal be allowed, and that a transcript of all the proceedings and papers upon which said order was made, duly authenticated, may be transmitted to the Supreme Court of the United States.

W. C. JONES,
Attorney General for the State of Washington.

Dated this 23 day of June, 1893.

18 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. COOVERT for a Writ of *Habeas Corpus*. } Order on Appeal.

Now, on this 23rd day of June, A. D. 1893, comes the State of Washington, by W. C. Jones, Esquire, attorney general for said State, and prays that an appeal may be allowed to the Supreme Court of the United States from the order heretofore made in this court in the above-entitled cause on the 22nd day of June, A. D. 1893, discharging one M. L. Coovert from the custody of the sheriff of the county of Clarke, State of Washington, and that all papers, proceedings, and documents relating to said cause may be transmitted by copy thereof, duly authenticated, to the Supreme Court of the United States next to be holden.

And the court, being fully advised in the premises, and the said M. L. Coovert appearing in open court by J. C. Flanders, Esquire, his attorney—

It is ordered that said appeal be, and the same is hereby, allowed.

Further ordered that certified copies, duly authenticated, of all papers, documents, and proceedings in said cause be transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on said appeal be fixed at the sum of — dollars.

Done in open court this 23rd day of June, A. D. 1893.

C. H. HANFORD,
District Judge, Presiding in said Circuit Court.

19 Endorsed: Order allowing appeal. Filed June 23, 1893.

A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

20 In the Circuit of the United States for the Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT. # 276. On Petition for Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

Know all men by these presents that we, M. L. Coovert, of Vancouver, in the State of Washington, as principal, and G. H. Heilbron, of Seattle, in the State of Washington, as surety, are held and firmly bound unto the clerk of the circuit court of the United States for the district of Washington in the penal sum of two hundred and fifty ($250.00) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Signed by our hands and sealed with our seals this 31 day of July, A. D. 1893.

The condition of the foregoing obligation is such that whereas the said M. L. Coovert, principal above named, was on the 9th day of June, 1893, arrested by George Nerton, sheriff of the county of Clarke, in said State, at Vancouver, in said county and State, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of the State of Washington for said county of Clarke, sitting and acting as a committing magistrate, for an alleged violation by the said Coovert of a certain law of the said State

21 of Washington declaring it to be unlawful for any person or persons whatever to manufacture, buy, sell, give, or furnish to any one any cigarettes, cigarette paper, or cigarette wrapper, it being charged that the said Coovert had sold to one C. M. McDonald a package of cigarettes, consisting of a slide pasteboard box containing ten paper-wrapped cigarettes, packed with other similar boxes in a loose top unsealed paste-board box, which said package was shipped to the said Coovert by the American Tobacco Company

from the State of Oregon to the State of Washington, all as more particularly set forth in the petition of the said M. L. Coovert, heretofore filed herein, for a writ of *habeas corpus;* and

Whereas, on the 22nd day of June, 1893, said cause was duly heard in this court on a demurrer to the petition and on the return to the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893; and

Whereas, in said cause, on the 22nd day of June, 1893, an order was duly made and entered discharging the said M. L. Coovert from the detention and imprisonment complained of in said petition as aforesaid; and

Whereas by said order of the 22nd day of June, 1893, it was ordered and required that the said M. L. Coovert should enter into a bond in the sum of two hundred and fifty ($250.00) dollars, with one or more sureties, for his appearance to answer the judgment of the appellate court herein:

Now, therefore, if the said M. L. Coovert shall appear and answer the judgment of the appellate court in the premises and abide by and obey such order or judgment as the appellate court may render or make or cause to be rendered or made by the circuit court of the United States above named, then this obligation to be void;
22 otherwise to remain in full force and virtue.

M. L. COOVERT. [SEAL.]
G. H. HEILBRON. [SEAL.]

Signed, sealed, & delivered in presence of—
L. B. STEDMAN.

Taken and acknowledged before me this 31 day of July, 1893.
R. M. HOPKINS,
Deputy Clerk U. S. Circuit Court, District of Washington.

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

G. H. Heilbron, being first duly sworn, deposes and says that he is the surety named in the foregoing bond; that he is not a sheriff, clerk of court, attorney-at-law, or any other officer of any court in the State of Washington; that he is a citizen, resident, and freeholder in said State of Washington, and is worth at least the sum of two hundred and fifty ($250) dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.
G. H. HEILBRON.

Subscribed and sworn to before me this 31 day of July, 1893.
L. B. STEDMAN,
Notary Public in and for the State of Washington, Residing at Seattle, King County, in said State.

Endorsed: Bond. Filed Jul- 31, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

23 United States Circuit Court for the District of Washington.

In Re M. L. COOVERT, *Habeas Corpus.* # 276.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor for petitioner in the above-entitled cause.

C. E. S. WOOD, *Solicitor,*
Of Williams & Wood, Att'ys.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

24 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above entitled court:

You will please enter my appearance as attorney for Geo. Nerton, sheriff, in the above-entitled cause.

C. D. BOWLES,
Pros. Att'y for the State of Washington, Clarke County, and Attorney for Geo. Nerton, Sheriff.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

25 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as counsel & solicitor for appellant in the above-entitled cause.

W. C. JONES, *Att'y Gen'l.*

Endorsed: Præcipe for appearance. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

26 In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

Ex Parte: M. L. COOVERT on *Habeas Corpus.*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, ninth judicial circuit, do hereby certify the foregoing twenty-five typewritten pages, numbered from one to twenty-five, inclusive, to be a full, true, and correct copy of the record and of all the proceedings had in the above and therein

entitled cause, and that the same constitutes the transcript of the record upon appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 31st day of July, A. D. 1893.

{ Seal United States Circuit Court, District Washington, Northern Division. }

A. REEVES AYRES,
Clerk U. S. Circuit Court for the District of Washington,
By R. M. HOPKINS,
Deputy Clerk.

Endorsed on cover: Case No. 15,560. Washington C. C. U. S. Term No., 1176. The State of Washington, appellant, *vs.* M. L. Coovert. Filed April 3d, 1894.

164-702.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1157~~. ~~681~~ ~~360~~ 92

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED APRIL 3, 1894.

(15,561.)

(15,561.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1177.

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 4, 1894.

a In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

In Re M. L. COOVERT on *Habeas Corpus.*

Transcript.

1 To the honorable circuit court of the United States for the district of Washington:

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Your petitioner, M. L. Coovert, complains and shows the court as follows:

That he is a citizen and resident of the State of Washington, and that he is unjustly and unlawfully detained and imprisoned by George Nerton, sheriff of the county of Clarke, State of Washington, at Vancouver, in the county of Clarke and State of Washington, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of Washington for Clarke county, under the following circumstances:

Your petitioner is a citizen of the United States and so was at the time of his arrest, and was and is a citizen of the State of Washington, and at the time of the grievance herein complained of was and is engaged in the business of a retail tobacco dealer in the city of Vancouver, county of Clarke and State of Washington.

That while so engaged in conducting his business as said retail tobacco dealer he was on the ninth day of June, 1893, arrested by the sheriff of Clarke county, State of Washington, one George Nerton, by the order of and upon a warrant issued by the Honorable E. A. Wiswall, sitting and acting as judge of the superior court of the State of Washington for the county of Clarke, a copy of which warrant is hereto attached, marked "Exhibit No. 1," and which your petitioner prays may be considered as a part of this petition the same as if it was expressly incorporated in it, and he ever since has been kept in confinement and under arrest and is now under arrest as aforesaid and restrained of his liberty upon
2 the following charges, violation of the following law of the State of Washington:

"SECTION 1. That it shall be unlawful for any person or persons whatever to manufacture, buy, sell, give or furnish to any one cigarettes, cigarette paper or cigarette wrapper.

"SEC. 2. That whosoever manufactures, buys, sells, gives or furnishes to any person or persons cigarettes, cigarette paper or cigarette wrapper shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned in jail not exceeding six months, or both, for each offense.

"SEC. 3. This act shall be liberally construed to the end that its object shall be enforced.

"SEC. 4. All laws or parts of laws in conflict with the provisions of this act are hereby repealed."

And upon the affidavit, of which a copy is hereto attached and marked as "Exhibit No. 2," and which your petitioner expressly makes a part of this petition the same as if incorporated in it, and prays that it may be so considered.

And that immediately upon the arrest of your petitioner he was taken before the said Honorable E. A. Wiswall, sitting and acting as judge of the superior court as aforesaid and as a committing magistrate; that before said magistrate testimony was given by C. L. MacDonald and G. W. Stapleton as follows: That your petitioner had sold to C. L. MacDonald a package of cigarettes marked Pet cigarettes, being ten paper-wrapped cigarettes, enclosed as a bundle in an oiled paper and tinfoil wrapped with an outer paper wrapper, on which is the name of manufacturer, brand of cigarettes, number of cigarettes, with the caution notice required by the laws
3 of the United States printed on the side of said bundle and the United States internal revenue stamp for ten cigarettes pasted around *of* said bundle, number of manufacturer's district and State; and the said package so sold by your petitioner was *rpo*duced before the committing magistrate as evidence and is herewith produced as "Exhibit No. 3" of this petition.

The aforesaid facts your petitioner admits to be true. The said cigarettes were sold in Oregon to your petitioner by the American Tobacco Company, doing business in the State of New York and Virginia, and said cigarettes were manufactures in Virginia, and were shipped to your petitioner in pasteboard boxes containing fifty such packages exactly similar to said "Exhibit 3." That said pasteboard boxes are called "cartons" by the trade, and are used simply for the purpose of making convenient parcels of the packages of cigarettes for enumeration and handling at the factory, and to protect the cigarettes packages when in storage, and one of such "cartons" is herewith produced as "Exhibit No. 4" of this petition, and is more particularly described as follows: A loose top unsealed box bearing only the name of the manufacturer and the brand of cigarettes; said cartons are not of a fixed or invariable size, but are and will be made to suit the special desires of dealers.

That said cartons were shipped to your petitioner by said American Tobacco Company from the State of Oregon, enclosed in common pine shipping cases, being merely packing cases for the protection and safety of the goods in transportation, and that heretofore, to wit, April 6, 1893, the honorable the Commissioner of Internal Revenue for the United States decided that such a package as said "Exhibit 3," containing a statutory quantity of cigarettes
4 and properly stamped and cancelled and bearing the caution label and number of manufacturing district and State and the number of cigarettes contained therein, was an original package as contemplated by United States law and regulations, and that the repacking of said packages in additional coverings of wood, paper, etc., was optional with the manufacturer. A true copy of the letter of said Commissioner, announcing such decision, is

hereto attached as "Exhibit No. 5," which your petitioner prays may be considered as a part of this petition to the same effect as if incorporated in it.

And your petitioner is advised by counsel learned in the law that his detention is unlawful, as being in contravention of the constitutional provision of the United States contained in the fourteenth amendment to the Constitution of the United States, section 1; that said detention is also unlawful, as being in contravention of article 1, section 8, of the Constitution of the United States, and that said law under which your petitioner was arrested and is now detained is invalid, as contrary to the provisions of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and deprives your petitioner of liberty and property without due process of law, and also that its effect is to prohibit and regulate commerce among the several States.

And your petitioner claims that said law is invalid in the premises and that he is held without jurisdiction or authority.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said George Nerton, sheriff of the county of Clarke, in the State of Washington, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require.

M. L. COOVERT, *Petitioner.*

C. E. S. WOOD,
Solicitor for Petitioner, of
Williams & Wood, Att'ys.

UNITED STATES OF AMERICA, }
District of Washington, } ss:

I, M. L. Coovert, being first duly sworn, depose and say that I am the petitioner named in the foregoing petition; that it has been subscribed by me and I have read the same and know the contents thereof, and that all the statements therein made are true, as I verily believe.

M. L. COOVERT.

Subscribed and sworn to before me this 10th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court,*
Clarke County, Washington.

EXHIBIT No. 1.

STATE OF WASHINGTON, }
County of Clarke, } ss:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county charged on the oath of C. D. Bowles with having, on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes, and in the prog-

ress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give a bail in the sum of $250.00 *dollars* for his appearance to answer at the next session of the superior court as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,

[SEAL.] *County Clerk and Clerk of the Superior Court.*

7 EXHIBIT No. 5.

B. H. C. TREASURY DEPARTMENT, H. C. R.
V. E. W. OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

In correspondence on this subject quote the above initials.

WASHINGTON, D. C., *April* 6, 1893.

American Tobacco Company, No. 45 Broadway, New York, N. Y.

GENTLEMEN: In reply to your inquiry of April 3d, submitting a sample package of cigarettes bearing thereon the internal revenue stamp and the printed marks and caution label and inquiring as to the necessity for a re-enclosing in an additional covering of paper, wood, or other material in placing the same upon the market, you are notified that said package, being a statutory quantity and properly stamped and cancelled and bearing thereon the caution label and the number of the manufactory, the district, and State and the number of cigarettes contained therein, meets the approval of this bureau, being a proper and original package as contemplated by existing law and regulations.

Therefore the repacking of said packages in additional coverings of wood, paper, etc., is optional with the manufacturer and does not concern this bureau. This option is permissible under existing regulations, series 7, No. 8, Revised —, page 46, and Internal Revenue Record, vol. 32, page 365, dated November 22, 1886.

Respectfully yours,

(Signed) JOHN W. MASON,
Commissioner.

8 EXHIBIT No. 2.

STATE OF WASHINGTON, } ss:
County of Clarke, }

I, C. D. Bowles, first being duly sworn according to law, depose and say as follows:

I accuse M. L. Coovert, of Vancouver, Clarke county, State of Washington, of the crime of selling and furnishing cigarettes, contrary to the statute in such cases made and provided, committed as follows: Said M. L. Coovert is a retail tobacco dealer doing busi-

ness in Vancouver, county of Clarke, State of Washington, and on Friday, June the 9th, 1893, at his said place of business, in said city of Vancouver, the said M. L. Coovert did sell and furnish to one C. L. McDonald one package of cigarettes, more particularly described as follows:

A bundle of ten paper-wrapped cigarettes, marked "Pet Cigarettes," said bundle being a tin-foil and oiled-paper inside wrapper with an outside paper wrapper on which is printed the statutory caution notice number of manufacturing district and State, and to which is affixed the required U. S. revenue stamp duly cancelled; and having also printed upon it the manufacturer's name and brand of cigarettes, which said package of cigarettes was and is of the value of ten cents.

C. D. BOWLES.

Subscribed and sworn to before me this 9th day of June, 1893.

H. R. CAPLES,
County Clerk.

9 Endorsed: Petition for a writ of *habeas corpus.* Filed June 12, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

10 In the Circuit Court of the United States, Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes Geo. Nerton, sheriff of the county of Clarke, State of Washington, by his attorney, C. D. Bowles, and demurs to the petition filed in the above-entitled cause for the following reason, to wit:

That the facts set forth in said petition do not state facts sufficient to constitute a cause for the relief prayed for, to wit, the issuance of a writ of *habeas corpus.*

C. D. BOWLES,
Attorney for Geo. Nerton and Prosecuting Attorney for the State of Washington for the County of Clarke.

UNITED STATES OF AMERICA, } ss:
District of Washington, }

I, C. D. Bowles, do hereby certify that I am a regularly admitted and practicing attorney in the circuit court of the United States for the district of Washington, and I have examined the demurrer herein set forth and that the same is well founded in point of law.

C. D. BOWLES.

Endorsed: Demurrer. Filed June 13, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

11 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

In Re M. L. COOVERT on *Habeas Corpus.* #277.

Now, on this day, this cause comes on regularly to be heard upon the petition of M. L. Coovert for a writ of *habeas corpus*, and, the court having duly considered the petition and the argument of C. E. S. Wood, Esq., counsel for petitioner, and of C. D. Bowles, Esq., counsel for George Nerton, sheriff, and being now sufficiently advised, it is ordered that said petition be, and the same is hereby, granted, and the clerk of this court is directed to issue a writ of *habeas corpus*, addressed to George Nerton, sheriff of the county of Clarke, State of Washington, returnable at Seattle June 22, 1893, at the hour of ten o'clock a. m.

12 In the Circuit Court of the United States for the District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Habeas Corpus; Return to the Writ.

To the circuit court of the United States for the district of Washington:

George Nerton, sheriff of Clarke county, State of Washington, to whom the within writ is directed, has now and here before the court the body of M. L. Coovert, therein named, as thereby commanded; and I, the said George Nerton, do hereby certify that the cause of the arrest and detention of said M. L. Coovert is a warrant of commitment to me directed, issued by the Honorable E. A. Wiswall, judge of the superior court for the State of Washington, in the county of Clarke, sitting as committing magistrate, a copy of which warrant of commitment is hereto annexed, marked Exhibit No. 1, and made a part hereof; which said warrant was issued in the manner and under the facts and circumstances and for the purpose set forth in the petition of the said M. L. Coovert herein.

GEO. NERTON,
Sheriff of Clarke County, State of Washington.

13 STATE OF WASHINGTON, } ss:
County of Clarke, }

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county, charged, on the oath of C. D. Bowles, with having on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes; and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of — dollars for his appearance to answer at the next session of the superior court,

as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he is discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,

[SEAL.] *County Clerk and Clerk of the Superior Court.*

14 UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

In the Matter of M. L. COOVERT on *Habeas Corpus.*

The President of the United States of America to George Nerton, sheriff of the county of Clarke, Washington, Greeting:

You are hereby commanded that you have the body of M. L. Coovert, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the ninth judicial circuit, district of Washington, at the court-room of said court, in the city of Seattle, on the 22nd day of June, 1893, at 10 o'clock a. m, to do and receive what shall then be considered in the premises; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the 117th.

A. REEVES AYRES, *Clerk,*

[SEAL.] By R. M. HOPKINS, *Deputy.*

Endorsed: Writ of *habeas corpus* and return thereto. Filed on return, this 22nd day of June, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

15 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes M. L. Coovert, petitioner, by C. E. S. Wood, his solicitor, and on the return of the sheriff to the writ moves the court for an order discharging the petitioner.

C. E. S. WOOD,
Solicitor for M. L. Coovert.

Endorsed: Motion to discharge petitioner. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

16 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now, at this time, comes on this cause to be heard upon the petition of M. L. Coovert, duly filed in this court, praying for the issuance of the writ of *habeas corpus*.

And upon the demurrer to said petition, duly filed by George Nerton, sheriff of Clarke county, Washington, and upon the evidence and exhibits submitted with said petition, and upon the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893, and upon the return of George Nerton, sheriff of Clarke county, State of Washington, to said writ; and the motion to discharge the petitioner and the body of M. L. Coovert in the foregoing writ of *habeas corpus* mentioned being brought before the court at the time and the place in said writ named, and the return thereto being read, and the petitioner appearing by Mr. C. E. S. Wood, his solicitor, and moving the court for his discharge, and the sheriff of Clarke county, George Nerton, appearing by C. D. Bowles, his solicitor, and the court having considered the said petition and demurrer thereto, the exhibits, the writ of *habeas corpus* and the return thereto, and the motion to discharge the petitioner, and having heard the argument in the premises and being fully advised, and it appearing to the court that the facts and circumstances are not sufficient to justify the imprisonment of the said M. L. Coovert and no sufficient cause for the detention of the said M. L. Coovert appearing, it is hereby—

17 Ordered, adjudged, and decreed that the said law of the State of Washington prohibiting the sale of cigarettes and referred to in the petition is in contravention of article 1 of section 8 of the Constitution of the United States and null and void in so far as it prohibits or attempts to prohibit the selling, giving, or furnishing to any one by the importer of a bundle in a oiled paper and tinfoil wrapper containing ten paper-wrapped cigarettes, having upon the outer wrapper the U. S. internal revenue stamp and caution notice as required by law, also number of manufacturer's district and State, which bundle was received by the importer from without the State of Washington, packed in a pasteboard box or carton, and said carton packed with others in a common pine shipping case, and that the said M. L. Coovert be by said George Nerton, sheriff of Clarke county, forthwith discharged from imprisonment and detention for the cause as in said petition aforesaid.

And it is further ordered, adjudged, and decreed that the said M. L. Coovert, petitioner, shall enter into a recognizance in the sum of two hundred and fifty ($250.00) dollars with the clerk of this court, with one or more sureties, for his appearance to answer the judgment of the appellate court in the premises.

C. H. HANFORD, *Judge.*

Dated this 22nd day of June, 1893.

Endorsed: Judgment. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

18 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. Coovert for a Writ of *Habeas Corpus.* } Petition on Appeal.

Comes now the State of Washington, by the attorney general, and, considering itself aggrieved by the order of the above-entitled court in the above-entitled proceeding, of date June 22nd, 1893, discharging the said M. L. Coovert from the custody of the sheriff of Clarke county upon the writ of *habeas corpus* heretofore sued out by him, doth hereby appeal from the said order of said court heretofore made, as aforesaid, to the Supreme Court of the United States, and prays that this appeal be allowed, and that a transcript of all the proceedings and papers upon which said order was made, duly authenticated, may be transmitted to the said Supreme Court of the United States.

W. C. JONES,
Attorney General for the State of Washington.

Dated this 23 day of June, 1893.

19 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. Coovert for a Writ of *Habeas Corpus.* } Order on Appeal.

Now, on this 23rd day of June, A. D. 1893, comes the State of Washington, by W. C. Jones, Esquire, attorney general for said State, and prays that an appeal may be allowed to the Supreme Court of the United States from the order heretofore made in this court in the above-entitled cause on the 22nd day of June, A. D. 1893, discharging one M. L. Coovert from the custody of the sheriff of the county of Clarke, State of Washington, and that all papers, proceedings, and documents relating to said cause may be transmitted by copy thereof, duly authenticated, to the Supreme Court of the United States next to be holden.

And the court, being fully advised in the premises, and the said M. L. Coovert appearing in open court by J. C. Flanders, Esquire, his attorney—

It is ordered that said appeal be, and the same is hereby, allowed.

Further ordered that certified copies, duly authenticated, of all papers, documents, and proceedings in said cause be transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on said appeal be fixed at the sum of — dollars.

Done in open court this 23rd day of June, A. D. 1893.

C. H. HANFORD,
District Judge, Presiding in the Circuit Court.

20 Endorsed: Order allowing appeal. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

21 In the Circuit Court of the United States for the Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT. } No. 277. On Petition for Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

Know all men by these presents that we, M. L. Coovert, of Vancouver, in the State of Washington, as principal, and G. H. Heilbron, of Seattle, in the State of Washington, as surety, are held and firmly bound unto the clerk of the circuit court of the United States for the district of Washington in the penal sum of two hundred and fifty ($250.00) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Signed with our hands and sealed with our seals this 31 day of July, A. D. 1893.

The condition of the foregoing obligation is such that whereas the said M. L. Coovert, principal above named, was on the 9th day of June, 1893, arrested by George Nerton, sheriff of the county of Clarke, in said State, at Vancouver, in said county and State, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of the State of Washington for said
22 county of Clarke, sitting and acting as a committing magistrate, for an alleged violation by said Coovert of a certain law of the said State of Washington declaring it to be unlawful for any person or persons whatever to manufacture, buy, sell, give, or furnish to any one any cigarettes, cigarette paper, or cigarette wrapper, it being charged that the said Coovert had sold to one C. M. McDonald a package of cigarettes, consisting of a bundle in an oiled-paper and tinfoil wrapper, containing ten paper wrapped cigarettes, packed in a pasteboard box, and said box packed with others in a common pine shipping case, which said package was shipped to said Coovert by the American Tobacco Company from the State of Oregon to the State of Washington; all as more particularly set forth in the petition of the said M. L. Coovert, heretofore filed herein, for a writ of *habeas corpus;* and—

Whereas, on the 22nd day of June, 1893, said cause was duly heard in this court on a demurrer to the petition and on the return to the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893; and

Whereas, in said cause, on the 22nd day of June, 1893, an order was duly made and entered discharging the said M. L. Coovert from the detention and imprisonment complained of in said petition as aforesaid; and

Whereas by said order of the 22nd day of June, 1893, it was or-

dered and required that the said M. L. Coovert should enter into a bond in the sum of two hundred and fifty ($250.00) dollars, with one or more sureties, for his appearance to answer the judgment of the appellate court herein:

23 Now, therefore, if the said M. L. Coovert shall appear and answer the judgment of the appellate court in the premises and abide by and obey such judgment or order as the appellate court may render or make or cause to be rendered or made by the circuit court of the United States above named, then this obligation to be void; otherwise to remain in full force and virtue.

M. L. COOVERT. [SEAL.]
G. H. HEILBRON. [SEAL.]

Signed, sealed, & delivered in presence of—
L. B. STEDMAN.

Taken and acknowledged before me this 31 day of July, 1893.
R. M. HOPKINS,
Deputy Clerk U. S. Circuit Court, District of Washington.

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

G. H. Heilbron, being first duly sworn, deposes and says that he is the surety named in the foregoing bond; that he is not a sheriff, clerk of court, attorney-at-law, or any other officer of any court in the State of Washington; that he is a citizen, resident, and freeholder in said State of Washington, and is worth at least the sum of two hundred and fifty ($250) dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.
G. H. HEILBRON.

Subscribed and sworn to before me this 31 day of July, 1893.
L. B. STEDMAN,
Notary Public in and for the State of Washington, Residing at Seattle, King County, in said State.

Endorsed: Bond. Filed Jul- 31, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

24 United States Circuit Court for the District of Washington.

In Re M. L. COOVERT, *Habeas Corpus.* # 277.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor for petitioner in the above-entitled cause.

C. E. S. WOOD, *Solicitor,*
Of Williams & Wood, Att'ys.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

25 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as attorney for Geo. Nerton, sheriff, in the above-entitled cause.

C. D. BOWLES,
Prosecuting Attorney for Clarke County, State of Washington, and Attorney for Geo. Nerton, Sheriff.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

26 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as counsel & solicitor for appellant in the above-entitled cause.

W. C. JONES, *Att'y Gen'l.*

Endorsed: Præcipe for appearance. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

27 In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

Ex Parte: M. L. COOVERT on *Habeas Corpus.*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, ninth judicial circuit, do hereby certify the foregoing twenty-six typewritten pages, numbered from one to twenty-six, inclusive, to be a full, true, and correct copy of the record and of all the proceedings had in the above and therein entitled cause, and that the same constitutes the transcript of the record upon appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 31st day of July, A. D. 1893.

{ Seal United States Circuit Court, District Washington, Northern Division. }

A. REEVES AYRES,
Clerk U. S. Circuit Court for the District of Washington,
By R. M. HOPKINS,
Deputy Clerk.

Endorsed on cover: Case No. 15,561. Washington C. C. U. S. Term No., 1177. The State of Washington, appellant, *vs.* M. L. Coovert. Filed April 3d, 1894.

164-702

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1178~~. ~~682~~ ~~361~~ 93

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED APRIL 3, 1894.

(15,562.)

(15,562.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1178.

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 4, 1894.

a In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

In Re M. L. COOVERT on *Habeas Corpus.*

Transcript.

1 To the honorable circuit court of the United States for the district of Washington:

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Your petitioner, M. L. Coovert, complains and shows to the court as follows:

That he is a citizen and resident of the State of Washington, and that he is unjustly and unlawfully detained and imprisoned by George Nerton, sheriff of the county of Clarke, State of Washington, at Vancouver, in the county of Clarke and State of Washington, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of Washington for Clarke county, under the following circumstances:

Your petitioner is a citizen of the United States and so was at the time of his arrest, and was and is a citizen of the State of Washington, and at the time of the grievance herein complained of was and is engaged in the business of a retail tobacco dealer in the city of Vancouver, county of Clarke and State of Washington.

That while so engaged in conducting his business as said retail tobacco dealer he was on the ninth day of June, 1893, arrested by the sheriff of Clarke county, State of Washington, one George Nerton, by the order of and upon a warrant issued by the Honorable E. A. Wiswall, sitting and acting as judge of the superior court of the State of Washington for the county of Clarke, a copy of which warrant is hereto attached, marked "Exhibit No. 1," and which your petitioner prays may be considered as a part of this petition the same as if it was expressly incorporated in it, and he ever since has been kept in confinement and under arrest and now is under arrest as aforesaid and restrained of his liberty upon

2 the following charges, violation of the following law of the State of Washington:

"SECTION 1. That it shall be unlawful for any person or persons whatever to manufacture, buy, sell, give or furnish to any one cigarettes, cigarette paper or cigarette wrapper.

"SEC. 2. That whosoever manufactures, buys, sells, gives or furnishes to any person or persons cigarettes, cigarette paper or cigarette wrapper shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned in jail not exceeding six months, or both, for each offense.

"SEC. 3. This act shall be liberally construed to the end that its object shall be enforced.

"SEC. 4. All laws or parts of laws in conflict with the provisions of this act are hereby repealed."

And upon the affidavit, of which a copy is hereto attached and marked as "Exhibit No. 2," and which your petitioner expressly makes a part of this petition the same as if incorporated in it, and prays that it may be so considered.

And that immediately upon the arrest of your petitioner he was taken before the said Honorable E. A. Wiswall, sitting and acting as judge of the superior court as aforesaid and as a committing magistrate; that before said magistrate testimony was given by C. L. MacDonald and E.W. Stapleton as follows: That your petitioner had sold to C. L. MacDonald a package of cigarettes marked Social Whiffs, being ten tobacco-wrapped cigarettes, enclosed in a pasteboard box, having pasted on it the U. S. revenue stamp for ten cigarettes; and the said package so sold by your petitioner was produced before the committing magistrate as evidence and
3 is herewith produced as "Exhibit No. 3" of this petition.

The aforesaid facts your petitioner admits to be true, except as to said articles being cigarettes, petitioner alleges that they are small cigars. Said cigars were sold in New York to your petitioner by the American Tobacco Company, doing business in the State of New York, and said cigars were manufactures in New York and were shipped to you petitioner in wooden boxes, containing twenty-five such packages, exactly similar to said "Exhibit 3." That said wooden boxes or cartons were shipped to your petitioner by said American Tobacco Company from the State of Oregon, enclosed in common pine shipping cases, being merely packing cases for the protection and safety of the goods in transportation, and that heretofore, to wit, April 6, 1893, the honorable the Commissioner of Internal Revenue for the United States decided that such a package as said "Exhibit 3," containing a statutory quantity of cigarettes and properly stamped and cancelled and bearing the caution label and number of the manufacturing district and State and the number of cigarettes contained therein, was an original package as contemplated by United States law and regulations, and that the repacking of said packages in additional coverings of wood, paper, etc., was optional with the manufacturer. A true copy of the letter of said Commissioner, announcing such decision, is hereto attached as "Exhibit No. 5," which your petitioner prays may be considered as a part of this petition to the same effect as if incorporated in it.

That your petitioner is advised by counsel learned in the law that his detention is unlawful, as being in contravention of the constitutional provision of the United States contained in the four-
4 teenth amendment to the Constitution of the United States, section 1; that said detention is also unlawful, as being in contravention of article 1, section 8, of the Constitution of the United States, and that said law under which your petitioner was arrested and is now detained is invalid, as contrary to the provisions of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and deprives your

petitioner of liberty and property without due process of law, and also that its effect is to prohibit and regulate commerce among the several States.

And your petitioner claims that said law is invalid in the premises and that he is held without jurisdiction or authority.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said George Nerton, sheriff of the county of Clarke, in the State of Washington, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require.

M. L. COOVERT, *Petitioner.*

C. E. S. WOOD,
Solicitor for Petitioner, of
Williams & Wood, Att'ys.

UNITED STATES OF AMERICA, }
District of Washington, } ss:

I, M. L. Coovert, being first duly sworn, depose and say that I am the petitioner named in the foregoing petition; that it has been subscribed by me and I have read the same and know the contents thereof, and that all the statements therein made are true, as I verily believe.

M. L. COOVERT.

Subscribed and sworn to before me this 10th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court,*
Clarke County, Washington.

EXHIBIT NO. 5.

B. H. C. TREASURY DEPARTMENT, H. C. R.
V. E. W. OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

In correspondence on this subject quote the above initials.

WASHINGTON, D. C., *April* 6, 1893.

American Tobacco Company, No. 45 Broadway, New York, N. Y.

GENTLEMEN: In reply to your inquiry of April 3d, submitting a sample package of cigarettes bearing thereon the internal revenue stamp and the printed marks and caution label and inquiring as to the necessity for a re-enclosing in an additional covering of paper, wood, or other material in placing the same upon the market, you are notified that said package, being a statutory quantity and properly stamped and cancelled and bearing thereon the caution label and the number of the manufactory, the district, and State and the number of cigarettes contained therein, meets with the approval of this bureau, being a proper and original package as contemplated by existing law and regulations.

Therefore the repacking of said packages in additional coverings of wood, paper, etc., is optional with the manufacturer and does not concern this bureau. This option is permissible under existing regulations, series 7, No. 8, Revised —, page 46, and Internal Revenue Record, vol. 32, page 365, dated November 22, 1886.

Respectfully yours,

(Signed) JOHN W. MASON,
Commissioner.

6 EXHIBIT No. 1.

STATE OF WASHINGTON, } ss:
County of Clarke, }

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county charged on oath of C. D. Bowles with having, on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes, and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of $250.00 *dollars* for his appearance to answer at the next session of the superior court as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court.*

7 EXHIBIT 2.

STATE OF WASHINGTON, } ss:
County of Clarke, }

I, C. D. Bowles, first being duly sworn according to law, depose and say as follows:

I accuse M. L. Coovert, of Vancouver, Clarke county, State of Washington, of the crime of selling and furnishing cigarettes, contrary to the statute in such cases made and provided, committed as follows: Said M. L. Coovert is a retail tobacco dealer doing business in Vancouver, county of Clarke, State of Washington, and on Friday, June the 9th, 1893, at his said place of business, in said city of Vancouver, the said M. L. Coovert did sell and furnish to one C. L. McDonald one package of cigarettes, more particularly described as follows:

A parcel of tobacco-wrapped cigarettes, being ten such cigarettes in a paper-wrapped parcel, which said package of cigarettes was and is of the value of ten cents.

C. D. BOWLES.

Subscribed and sworn to before me this 9th day of June, 1893.

H. R. CAPLES,
County Clerk.

Endorsed: Petition for a writ of *habeas corpus*. Filed June 12, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

8 In the Circuit Court of the United States, Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes Geo. Nerton, sheriff of the county of Clarke, State of Washington, by his attorney, C. D. Bowles, and demurs to the petition filed in the above-entitled cause for the following reason, to wit:

That the facts set forth in said petition do not state facts sufficient to constitute a cause for the relief prayed for, to wit, the issuance of a writ of *habeas corpus*.

C. D. BOWLES,
Attorney for Geo. Nerton and Prosecuting Attorney for the State of Washington for the County of Clarke.

UNITED STATES OF AMERICA, *District of Washington,* } ss:

I, C. D. Bowles, do hereby certify that I am a regularly admitted and practicing attorney in the circuit court of the United States for the district of Washington, and I have examined the demurrer herein set forth and that the same is well founded in point of law.

C. D. BOWLES.

Endorsed: Demurrer. Filed June 13, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

9 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

In Re M. L. COOVERT on *Habeas Corpus.* #278.

Now, on this day, this cause comes on regularly to be heard upon the petition of M. L. Coovert for a writ of *habeas corpus*, and, the court having duly considered the petition and the argument of C. E. S. Wood, Esq., counsel for petitioner, and of C. D. Bowles, Esq., counsel for George Nerton, sheriff, and being now sufficiently advised, it is ordered that said petition be, and the same is hereby, granted, and the clerk of this court is directed to issue a writ of *habeas corpus*, addressed to George Nerton, sheriff of the county of Clarke, State of Washington, returnable at Seattle June 22, 1893, at the hour of ten o'clock a. m.

10 In the Circuit Court of the United States for the District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Habeas Corpus; Return to the Writ.

To the circuit court of the United States for the district of Washington:

George Nerton, sheriff of Clarke county, State of Washington, to whom the within writ is directed, has now and here before the court the body of M. L. Coovert, therein named, as thereby commanded; and I, the said George Nerton, do hereby certify that the cause of the arrest and detention of said M. L. Coovert is a warrant of commitment to me directed, issued by the Honorable E. A. Wiswall, judge of the superior court of the State of Washington, in the county of Clarke, sitting as committing magistrate, a copy of which warrant of commitment is hereto annexed, marked Exhibit No. 1, and made a part hereof; which said warrant was issued in the manner and under the facts and circumstances and for the purpose set forth in the petition of the said M. L. Coovert herein.

GEO. NERTON,
Sheriff of Clarke County, State of Washington.

11 STATE OF WASHINGTON, } *ss:*
County of Clarke, }

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county, charged, on the oath of C. D. Bowles, with having on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes; and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said —— has failed to give bail in the sum of — dollars for his appearance to answer at the next session of the superior court, as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and the seal of said court this 9th day of June, 1893.

H. R. CAPLES,
County Clerk and Clerk of the Superior Court.

12 UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

In the Matter of M. L. COOVERT on *Habeas Corpus.*

The President of the United States of America to George Nerton, sheriff of the county of Clarke, Washington, Greeting:

You are hereby commanded that you have the body of M. L. Coovert, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the ninth judicial circuit, district of Washington, at the court-room of said court, in the city of Seattle, on the 22nd day of June, 1893, at 10 o'clock a. m, to do and receive what shall then be considered in the premises; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the 117th.

A. REEVES AYRES, *Clerk,*

[SEAL.] By R. M. HOPKINS, *Deputy Clerk.*

Endorsed: Writ of *habeas corpus* and return thereto. Filed on return, this 22nd day of June, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

13 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes M. L. Coovert, petitioner, by C. E. S. Wood, his solicitor, and on the return of the sheriff to the writ moves the court for an order discharging the petitioner.

C. E. S. WOOD,
Solicitor for M. L. Coovert.

Endorsed: Motion to discharge petitioner. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

14 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now, at this time, comes on this cause to be heard upon the petition of M. L. Coovert, duly filed in this court, praying for the issuance of the writ of *habeas corpus.*

And upon the demurrer to said petition, duly filed by George Nerton, sheriff of Clarke county, Washington, and upon the evidence and exhibits submitted with said petition, and upon the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893, and upon the return of George Nerton, sheriff of Clarke county, State of Washington, to said writ; and the motion to discharge the petitioner and the body of M. L. Coovert in the foregoing writ of *habeas corpus* mentioned being brought before the court at the time and the place in said writ named, and the return thereto being read, and the petitioner appearing by Mr. C. E. S. Wood, his solicitor, and moving the court for his discharge, and the sheriff of Clarke county, George Nerton, appearing by C. D. Bowles, his solicitor, and the court having considered the said petition and demurrer thereto, the exhibits, the writ of *habeas corpus* and the return thereto, and the motion to discharge the petitioner, and having heard the argument in the premises and being fully advised, and it appearing to the court that the facts and circumstances are not sufficient to justify the imprisonment of the said M. L. Coovert and no sufficient cause for the detention of the said M. L. Coovert appearing, it is hereby—

15 Ordered, adjudged, and decreed that the said law of the State of Washington prohibiting the sale of cigarettes and referred to in the petition is in contravention of article 1 of section 8 of the Constitution of the United States and null and void in so far as it prohibits or attempts to prohibit the selling, giving, or furnishing to any one by the importer of a pasteboard box concontaining ten tobacco-wrapped cigarettes, said box having upon it the U. S. — revenue stamp, which box was received by the importer from without the State of Washington, packed with other similar boxes in a wooden box or carton, and said carton packed with others in a common pine shipping case, and that the said M. L. Coovert be by said George Nerton, sheriff of Clarke county, forthwith discharged from imprisonment and detention for the cause as in said petition aforesaid.

And it is further ordered, adjudged, and decreed that the said M. L. Coovert, petitioner, shall enter into a recognizance in the sum of two hundred and fifty ($250.00) dollars with the clerk of this court, with one or more sureties, for his appearance to answer the judgment of the appellate court in the premises.

C. H. HANFORD, *Judge.*

Dated this 22nd day of June, 1893.

Endorsed: Judgment. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

16 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. Coovert for a Writ of *Habeas Corpus.* } Petition on Appeal.

Comes now the State of Washington, by the attorney general, and, considering itself aggrieved by the order of the above-entitled

court in the above-entitled premises, of date June 22nd, 1893, discharging the said M. L. Coovert from the custody of the sheriff of Clarke county upon the writ of *habeas corpus* heretofore sued out by him, doth hereby appeal from the said order of said court heretofore made, as aforesaid, to the Supreme Court of the United States, and prays that this appeal be allowed, and that a transcript of all the proceedings and papers upon which said order was made, duly authenticated, may be transmitted to the said Supreme Court of the United States.

W. C. JONES,
Attorney General for the State of Washington.

Dated this 23 day of June, 1893.

17 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. COOVERT for a Writ of *Habeas Corpus.* } Order on Appeal.

Now, on this 23rd day of June, A. D. 1893, comes the State of Washington, by W. C. Jones, Esquire, attorney general for said State, and prays that an appeal may be allowed to the Supreme Court of the United States from the order heretofore made in this court in the above-entitled cause on the 22nd day of June, A. D. 1893, discharging one M. L. Coovert from the custody of the sheriff of the county of Clarke, State of Washington, and that all papers, proceedings, and documents relating to said cause may be transmitted by copy thereof, duly authenticated, to the Supreme Court of the United States next to be holden.

And the court, being fully advised in the premises, and the said M. L. Coovert appearing in open court by J. C. Flanders, Esquire, his attorney—

It is ordered that said appeal be, and the same is hereby, allowed.

Further ordered that certified copies, duly authenticated, of all papers, documents, and proceedings in said cause be transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on said appeal be fixed at the sum of — dollars.

Done in open court this 23rd day of June, A. D. 1893.

C. H. HANFORD,
District Judge, Presiding in said Circuit Court.

Endorsed: Order allowing appeal. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

18 In the District Court of the United States for the Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT. # 278. On Petition for Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

Know all men by these presents that we, M. L. Coovert, of Vancouver, in the State of Washington, as principal, and G. H. Heilbron, of Seattle, in the State of Washington, as surety, are held and firmly bound unto the clerk of the circuit court of the United States for the district of Washington in the penal sum of two hundred and fifty ($250.00) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Signed with our hands and sealed with our seals this 31 day of July, A. D. 1893.

The condition of the foregoing obligation is such that whereas the said M. L. Coovert, principal above named, was on the 9th day of June, 1893, arrested by George Nerton, sheriff of the county of Clarke, in said State, at Vancouver, in said county and State, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of the State of Washington for said county of Clarke, sitting and acting as a committing magistrate, for an alleged violation by said Coovert of a certain law of the said State of Washington declaring it to be unlawful for any person or

19 persons whatever to manufacture, buy, sell, give, or furnish to any one any cigarettes, cigarette paper, or cigarette wrapper, it being charged that the said Coovert had sold to one C. M. McDonald a package of cigarettes, consisting of a pasteboard box containing ten tobacco-wrapped cigarettes, packed with similar boxes in a wooden box, said box being packed with others in a common pine shipping case, which said package was shipped to said Coovert by the American Tobacco Company from the State of Oregon to the State of Washington; all as more particularly set forth in the petition of the said M. L. Coovert, heretofore filed herein, for a writ of *habeas corpus;* and—

Whereas, on the 22nd day of June, 1893, said cause was duly heard in this court on a demurrer to the petition and on the return to the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893; and

Whereas, in said cause, on the 22nd day of June, 1893, an order was duly made and entered discharging the said M. L. Coovert from the detention and imprisonment complained of in said petition as aforesaid; and

Whereas by said order of the 22nd day of June, 1893, it was ordered and required that the said M. L. Coovert should enter into a bond in the sum of two hundred and fifty ($250.00) dollars, with

one or more sureties, for his appearance to answer the judgment of the appellate court herein:

Now, therefore, if the said M. L. Coovert shall appear and answer the judgment of the appellate court in the premises and abide by and obey such judgment or order as the appellate court may render or make or cause to be rendered or made by the circuit court of the United States above named, then this obligation to be void; otherwise to remain in full force and virtue.

M. L. COOVERT. [SEAL.]
G. H. HEILBRON. [SEAL.]

Signed, sealed, & delivered in presence of—
L. B. STEDMAN.

Taken and acknowledged before me this 31 day of July, 1893.
R. M. HOPKINS,
Deputy Clerk U. S. Circuit Court, District of Washington.

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

G. H. Heilbron, being first duly sworn, deposes and says that he is the surety named in the foregoing bond; that he is not a sheriff, clerk of court, attorney-at-law, or any other officer of any court in the State of Washington; that he is a citizen, resident, and freeholder in said State of Washington, and is worth at least the sum of two hundred and fifty ($250) dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

G. H. HEILBRON.

Subscribed and sworn to before me this 31 day of July, 1893.
L. B. STEDMAN,
Notary Public in and for the State of Washington, Residing at Seattle, King County, in said State.

Endorsed: Bond. Filed Jul- 31, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

21 United States Circuit Court for the District of Washington.

In Re M. L. COOVERT, *Habeas Corpus.* # 278.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor for petitioner in the above-entitled cause.

C. E. S. WOOD, *Solicitor,*
Of Williams & Wood, Att'ys.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

22 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as attorney for Geo. Nerton, sheriff, in the above-entitled cause.

C. D. BOWLES,
Attorney for Geo. Nerton, Sheriff & Prosecuting Attorney for Clarke Co., State of Washington.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, R. M. Hopkins, deputy clerk.

23 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as counsel & solicitor for appellant in the above-entitled cause.

W. C. JONES, *Att'y Gen'l.*

Endorsed: Præcipe for appearance. Filed June 23, 1893. A. Reeves Ayres, clerk, R. M. Hopkins, deputy clerk.

24 In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

Ex Parte: M. L. COOVERT on *Habeas Corpus.*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, ninth judicial circuit, do hereby certify the foregoing twenty-three typewritten pages, numbered from one to twenty-three, inclusive, to be a full, true, and correct copy of the record and of all the proceedings had in the above and therein entitled cause, and that the same constitutes the transcript of the record upon appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 31st day of July, A. D. 1893.

{ Seal United States Circuit Court, District Washington, Northern Division. }

A. REEVES AYRES,
Clerk U. S. Circuit Court for the District of Washington,
By R. M. HOPKINS,
Deputy Clerk.

Endorsed on cover: Case No. 15,562. Washington C. C. U. S. Term No., 1178. The State of Washington, appellant, *vs.* M. L. Coovert. Filed April 3d, 1894.

164-302

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1179.~~ 683 362 94

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED APRIL 3, 1894.

(15,563.)

(15,563.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1179.

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 5, 1894.

a In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

In Re M. L. COOVERT on *Habeas Corpus.*

Transcript.

1 To the honorable circuit court of the United States for the district of Washington:

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Your petitioner, M. L. Coovert, complains and shows to the court as follows:

That he is a citizen of and resident of the State of Washington, and that he is unjustly and unlawfully detained and imprisoned by George Nerton, sheriff of the county of Clarke, State of Washington, at Vancouver, in the county of Clarke and State of Washington, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of Washington for Clarke county, under the following circumstances:

Your petitioner is a citizen of the United States and so was at the time of his arrest, and was and is a citizen of the State of Washington, and at the time of the grievance herein complained of was and is engaged in the business of a retail tobacco dealer in the city of Vancouver, county of Clarke and State of Washington.

That while so engaged in conducting his business as said retail tobacco dealer he was on the ninth day of June, 1893, arrested by the sheriff of Clarke county, State of Washington, one George Nerton, by the order of and upon a warrant issued by the Honorable E. A. Wiswall, sitting and acting as judge of the superior court of the State of Washington for the county of Clarke, a copy of which warrant is hereto attached, marked "Exhibit No. 1," and which your petitioner prays may be considered as a part of this petition the same as if it was expressly incorporated in it, and he ever since has been kept in confinement and under arrest and now is under arrest as aforesaid and restrained of his liberty upon

2 the following charges, violation of the following law of the State of Washington:

"SECTION 1. That it shall be unlawful for any person or persons whatever to manufacture, buy, sell, give or furnish to any one cigarettes, cigarette paper or cigarette wrapper.

"SEC. 2. That whosoever manufactures, buys, sells, gives or furnishes to any person or persons cigarettes, cigarette paper or cigarette wrapper shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned in jail not exceeding six months, or both, for each offense.

"SEC. 3. This act shall be liberally construed to the end that its object shall be enforced.

"SEC. 4. All laws or parts of laws in conflict with the provisions of this act are hereby repealed."

And upon the affidavit, of which a copy is hereto attached and marked as "Exhibit No. 2," and which your petitioner expressly makes a part of this petition the same as if incorporated in it, and prays that it may be so considered.

And that immediately upon the arrest of your petitioner he was taken before the said Honorable E. A. Wiswall, sitting and acting as judge of the superior court as aforesaid and as a committing magistrate; that before said magistrate testimony was given by C. L. MacDonald and E. W. Stapleton as follows: That your petitioner had sold to C. L. MacDonald a package of cigarettes marked Duke's Cameo cigarettes, being ten paper-wrapped cigarettes, enclosed in a slide paste board box, having upon it name of manufacturer, brand, and number of manufacturer's district and State, and number of cigarettes, and with the caution notice required by the laws of the United States printed on the side of said box, and the
3 United States internal revenue stamp for ten cigarettes pasted on said box; and the said package so sold by your petitioner was produced before the committing magistrate as evidence and is herewith produced as "Exhibit No. 3" of this petition.

The aforesaid facts your petitioner admits to be true. The said cigarettes were sold in Oregon to your petitioner by the American Tobacco Company, doing business in the State of New York and North Carolina, and said cigarettes were manufactured in North Carolina and were shipped to your petitioner in pasteboard boxes, containing twenty such packages, exactly similar to said "Exhibit 3." That said pasteboard boxes are called "cartons" by the trade, and are used simply for the purpose of making convenient parcels of the packages of cigarettes for enumeration and handling at the factory, and to protect the cigarette packages when in storage, and one of such "cartons" is herewith produced as "Exhibit No. 4" of this petition, and is more particularly described as follows: A plain pasteboard box without mark of any kind on it. Such boxes are made in assorted sizes to suit the variable quantities of cigarettes desired by dealers.

That said cartons were shipped to your petitioner by said American Tobacco Company from the State of Oregon, enclosed in common pine shipping cases, being merely packing cases for the protection and safety of the goods in transportation, and that heretofore, to wit, April 6, 1893, the honorable the Commissioner of Internal Revenue for the United States decided that such a package as said "Exhibit 3," containing a statutory quantity of cigarettes and properly stamped and cancelled and bearing the caution label and number of the manufacturing district and State and the number of cigarettes contained therein, *therein* was an
4 original package as contemplated by United States law and regulations, and that the repacking of said packages in additional coverings of wood, paper, etc., was optional with the manufacturer. A true copy of the letter of said Commissioner, announcing such decision, is hereto attached as "Exhibit No. 5," which your

petitioner prays may be considered as a part of this petition to the same effect as if incorporated in it.

That your petitioner is advised by counsel learned in the law that his detention is unlawful, as being in contravention of the constitutional provision of the United States contained in the fourteenth amendment to the Constitution of the United States, section 1; that said detention is also unlawful, as being in contravention of article 1, section 8, of the Constitution of the United States, and that said law under which your petitioner was arrested and is now detained is invalid, as contrary to the provisions of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and deprives your petitioner of liberty and property without due process of law, and also that its effect is to prohibit and regulate commerce among the several States.

And your petitioner claims that said law is invalid in the premises and that he is held without jurisdiction or authority.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said George Nerton, sheriff of the county of Clarke, in the State of Washington, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require.

M. L. COOVERT, *Petitioner.*

5 C. E. S. WOOD,
Solicitor for Petitioner, of
Williams & Wood, Att'ys.

UNITED STATES OF AMERICA, } ss:
District of Washington, }

I, ——, being first duly sworn, depose and say that I am the petitioner named in the foregoing petition; that it has been subscribed by me and I have read the same and know the contents thereof, and that all the statements therein made are true, as I verily believe.

M. L. COOVERT.

Subscribed and sworn to before me this 10th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court,*
Clarke County, Washington.

6 EXHIBIT No. 1.

STATE OF WASHINGTON, } ss:
County of Clarke, }

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county charged on the oath of C. D. Bowles with having, on the 9th day of June, 1893, in said county,

committed the offense of selling cigarettes, and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of $250.00 *dollars* for his appearance to answer at the next session of the superior court as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,

[SEAL.] *County Clerk and Clerk of the Superior Court.*

7 EXHIBIT 2.

STATE OF WASHINGTON, } ss:
County of Clarke, }

I, C. D. Bowles, first being duly sworn according to law, depose and say as follows:

I accuse M. L. Coovert, of Vancouver, Clarke county, State of Washington, of the crime of selling and furnishing cigarettes, contrary to the statute in such cases made and provided, committed as follows: Said M. L. Coovert is a retail tobacco dealer doing business in Vancouver, county of Clarke, State of Washington, and on Friday, June the 9th, 1893, at his said place of business, in said city of Vancouver, the said M. L. Coovert did sell and furnish to one C. L. McDonald one package of cigarettes, more particularly described as follows:

A slide pasteboard box containing ten paper-wrapped cigarettes, and marked Duke's Cameo cigaretes, and having upon it the statutory caution notice, and U. S. revenue stamp cancelled, and number of the manufacturing district and State, which said package of cigarettes was and is of the value of five cents.

C. D. BOWLES.

Subscribed and sworn to before me this 9th day of June, 1893.

H. R. CAPLES,
County Clerk.

8 EXHIBIT No. 5.

B. H. C. TREASURY DEPARTMENT, H. C. R.
V. E. W. OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

In correspondence on this subject quote the above initials.

WASHINGTON, D. C., *April* 6, 1893.

American Tobacco Company, No. 45 Broadway, New York, N. Y.

GENTLEMEN: In reply to your inquiry of April 3d, submitting a sample package of cigarettes bearing thereon the internal revenue stamp and the printed marks and caution label and inquiring as to the necessity for a re-enclosing in an additional covering of paper,

wood, or other material in placing the same upon the market, you are notified that said package, being a statutory quantity and properly stamped and cancelled and bearing thereon the caution label and the number of the manufactory, the district, and State and the number of cigarettes contained therein, meets with the approval of this bureau, being a proper and original package as contemplated by existing law and regulations.

Therefore the repacking of said packages in additional coverings of wood, paper, etc., is optional with the manufacturer and does not concern this bureau. This option is permissible under existing regulations, series 7, No. 8, Revised —, page 46, and Internal Revenue Record, vol. 32, page 365, dated November 22, 1886.

Respectfully yours,

(Signed) JOHN W. MASON,
Commissioner.

Endorsed: Petition for a writ of *habeas corpus.* Filed June 12, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

9 In the Circuit Court of the United States, Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes Geo. Nerton, sheriff of the county of Clarke, State of Washington, by his attorney, C. D. Bowles, and demurs to the petition filed in the above-entitled cause for the following reason, to wit:

That the facts set forth in said petition do not state facts sufficient to constitute a cause for the relief prayed for, to wit, the issuance of a writ of *habeas corpus.*

C. D. BOWLES,
Attorney for Geo. Nerton and Prosecuting Attorney for the State of Washington for the County of Clarke.

UNITED STATES OF AMERICA, } ss:
District of Washington, }

I, C. D. Bowles, do hereby certify that I am a regularly admitted and practicing attorney in the circuit court of the United States for the district of Washington, and I have examined the demurrer herein set forth and that the same is well founded in point of law.

C. D. BOWLES.

Endorsed: Demurrer. Filed June 13, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

10 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

In Re M. L. COOVERT on *Habeas Corpus.* #279.

Now, on this day, this cause comes on regularly to be heard upon the petition of M. L. Coovert for a writ of *habeas corpus,* and, the

court having duly considered the petition and the argument of C. E. S. Wood, Esq., counsel for petitioner, and of C. D. Bowles, Esq., counsel for George Nerton, sheriff, and being now sufficiently advised, it is ordered that said petition be, and the same is hereby, granted, and the clerk of this court is directed to issue a writ of *habeas corpus*, addressed to George Nerton, sheriff of the county of Clarke, State of Washington, returnable at Seattle June 22, 1893, at the hour of ten o'clock a. m.

11 In the Circuit Court of the United States for the District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Habeas Corpus; Return to the Writ.

To the circuit court of the United States for the district of Washington:

George Nerton, sheriff of Clarke county, State of Washington, to whom the within writ is directed, has now and here before the court the body of M. L. Coovert, therein named, as thereby commanded; and I, the said George Nerton, do hereby certify that the cause of the arrest and detention of said M. L. Coovert is a warrant of committment to me directed, issued by the Honorable E. A. Wiswall, judge of the superior court for the State of Washington, in the county of Clarke, sitting as committing magistrate, a copy of which warrant of committment is hereto annexed, marked Exhibit No. 1, and made a part hereof; which said warrant was issued in the manner and under the facts and circumstances and for the purpose set forth in the petition of the said M. L. Coovert herein.

GEO. NERTON,
Sheriff of Clarke County, State of Washington.

12 STATE OF WASHINGTON, } ss:
County of Clarke, }

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county, charged, on the oath of C. D. Bowles, with having on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes; and in the progress of the trial of *of* said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of — dollars for his appearance to answer at the next session of the superior court, as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court.*

13 UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

In the Matter of M. L. COOVERT on *Habeas Corpus.*

The President of the United States of America to George Nerton, sheriff of the county of Clarke, Washington, Greeting:

You are hereby commanded that you have the body of M. L. Coovert, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the ninth judicial circuit, district of Washington, at the court-room of said court, in the city of Seattle, on the 22nd day of June, 1893, at 10 o'clock a. m, to do and receive what shall then be considered in the premises; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the 117th.

A. REEVES AYRES, *Clerk,*

[SEAL.] By R. M. HOPKINS, *Deputy.*

Endorsed: Writ of *habeas corpus* and return thereto. Filed on return, this 22d day of June, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

14 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes M. L. Coovert, petitioner, by C. E. S. Wood, his solicitor, and on the return of the sheriff to the writ moves the court for an order discharging the petitioner.

C. E. S. WOOD,
Solicitor for M. L. Coovert.

Endorsed: Motion to discharge petitioner. Filed June 22, 1893, in the U. S. circuit court A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

15 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now, at this time, comes on this cause to be heard upon the petition of M. L. Coovert, duly filed in this court, praying for the issuance of the writ of *habeas corpus.*

And upon the demurrer to said petition, duly filed by George

Nerton, sheriff of Clarke county, Washington, and upon the evidence and exhibits submitted with said petition, and upon the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893, and upon the return of George Nerton, sheriff of Clarke county, State of Washington, to said writ; and the motion to discharge the petitioner and the body of M. L. Coovert in the foregoing writ of *habeas corpus* mentioned being brought before the court at the time and the place in said writ named, and the return thereto being read, and the petitioner appearing by Mr. C. E. S. Wood, his solicitor, and moving the court for his discharge, and the sheriff of Clarke county, George Nerton, appearing by C. D. Bowles, his solicitor, and the court having considered the said petition and demurrer thereto, the exhibits, the writ of *habeas corpus* and the return thereto, and the motion to discharge the petitioner, and having heard the argument in the premises and being fully advised, and it appearing to the court that the facts and circumstances are not sufficient to justify the imprisonment of the said M. L. Coovert and no sufficient cause for the detention of the said M. L. Coovert appearing, it is hereby—

Ordered, adjudged, and decreed that the said law of the
16 State of Washington prohibiting the sale of cigarettes and referred to in the petition is in contravention of article 1 of section 8 of the Constitution of the United States and null and void in so far as it prohibits or attempts to prohibit the selling, giving, or furnishing to any one by the importer of a slide pasteboard box containing ten paper-wrapped cigarettes, said box having upon it the U. S. internal revenue stamp, and caution notice as required by law, also number of manufacturer's district and State, which box was received by the importer from without the State of Washington, packed in a pasteboard box or carton, and said carton packed with others in a common pine shipping case, and that the said M. L. Coovert be by said George Nerton, sheriff of Clarke county, forthwith discharged from imprisonment and detention for the cause as in said petition aforesaid.

And it is further ordered, adjudged, and decreed that the said M. L. Coovert, petitioner, shall enter into a recognizance in the sum of two hundred and fifty ($250.00) dollars with the clerk of this court, with one or more sureties, for his appearance to answer the judgment of the appellate court in the premises.

C. H. HANFORD, *Judge.*

Dated this 22nd day of June, 1893.

Endorsed: Judgment. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

17 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. Coovert for a Writ of *Habeas Corpus*. } Petition on Appeal.

Comes now the State of Washington, by the attorney general, and, considering itself aggrieved by the order of the above-entitled

court in the above-entitled proceeding, of date June 22nd, 1893, discharging the said M. L. Coovert from the custody of the sheriff of Clarke county upon the writ of *habeas corpus* heretofore sued out by him, doth hereby appeal from the said order of said court heretofore made, as aforesaid, to the Supreme Court of the United States, and prays that this appeal be allowed, and that a transcript of all the proceedings and papers upon which said order was made, duly authenticated, may be transmitted to the said Supreme Court of the United States.

W. C. JONES,
Attorney General for the State of Washington.

Dated this 23 day of June, 1893.

18 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. COOVERT for a Writ of *Habeas Corpus.* } Order on Appeal.

Now, on this 23rd day of June, A. D. 1893, comes the State of Washington, by W. C. Jones, Esquire, attorney general for said State, and prays that an appeal may be allowed to the Supreme Court of the United States from the order heretofore made in this court in the above-entitled cause on the 22nd day of June, A. D. 1893, discharging one M. L. Coovert from the custody of the sheriff of the county of Clarke, State of Washington, and that all the papers, proceedings, and documents relating to said cause may be transmitted by copy thereof, duly authenticated, to the Supreme Court of the United States next to be holden.

And the court, being fully advised in the premises, and the said M. L. Coovert appearing in open court by J. C. Flanders, Esquire, his attorney—

It is ordered that said appeal be, and the same is hereby, allowed.

Further ordered that certified copies, duly authenticated, of all papers, documents, and proceedings in said cause be transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on said appeal be fixed at the sum of — dollars.

Done in open court this 23rd day of June, A. D. 1893.

C. H. HANFORD,
District Judge, Presiding in said Circuit Court.

Endorsed: Order allowing appeal. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

19 In the Circuit Court of the United States for the Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT. # 279. On Petition for Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

Know all men by these presents that we, M. L. Coovert, of Vancouver, in the State of Washington, as principal, and G. H. Heilbron, of Seattle, in the State of Washington, as surety, are held and firmly bound unto the clerk of the circuit court of the United States for the district of Washington in the penal sum of two hundred and fifty ($250) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Signed by our hands and sealed with our seals this 31 day of July, 1893.

The condition of the foregoing obligation is such that whereas the said M. L. Coovert, principal above named, was on the 9th day of June, 1893, arrested by George Nerton, sheriff of the county of Clarke, in said State, at Vancouver, in said county and State, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of the State of Washington for said county of Clarke, sitting and acting as a committing magistrate, for an alleged violation by said Coovert of a certain law of said State of Washington declaring it to be unlawful for any person or persons whatever to manufacture, buy, sell, give, or furnish to any one
20 any cigarettes, cigarette paper, or cigarette wrapper, it being charged that the said Coovert had sold to one C. M. McDonald a package of cigarettes, consisting of a slide pasteboard box containing ten paper-wrapped cigarettes, packed in a pasteboard box, said box packed with others in a common pine shipping case, which said package was shipped to said Coovert by the American Tobacco Company from the State of Oregon to the State of Washington; all as more particularly set forth in the petition of the said M. L. Coovert, heretofore filed herein, for a writ of *habeas corpus;* and—

Whereas, on the 22nd day of June, 1893, said cause was duly heard in this court on a demurrer to the petition and on the return of the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893; and

Whereas, in said cause, on the 22nd day of June, 1893, an order was duly made and entered discharging the said M. L. Coovert from the detention and imprisonment complained of in said petition as aforesaid; and

Whereas by said order of the 22nd day of June, 1893, it was ordered and required that the said M. L. Coovert should enter into a bond in the sum of two hundred and fifty ($250.00) dollars, with

one or more sureties, for his appearance to answer the judgment of the appellate court herein:

Now, therefore, if the said M. L. Coovert shall appear and answer the judgment of the appellate court in the premises and abide by and obey such judgment or order as the appellate court may render or make or cause to be rendered or made by the circuit court of the United States above named, then this obligation to be void; otherwise to remain in full force and virtue.

M. L. COOVERT. [SEAL.]
G. H. HEILBRON. [SEAL.]

21 Signed, sealed, & delivered in presence of—
L. B. STEDMAN.

Taken and acknowledged before me this 31 day of July, 1893.
R. M. HOPKINS,
Deputy Clerk U. S. Circuit Court, District of Washington.

UNITED STATES OF AMERICA, }
District of Washington, County of King, } ss:

G. H. Heilbron, being first duly sworn, deposes and says that he is the surety named in the foregoing bond; that he is not a sheriff, clerk of court, attorney-at-law, or any other officer of any court in the State of Washington; that he is a citizen, resident, and freeholder in said State of Washington, and is worth at least the sum of two hundred and fifty ($250.00) dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

G. H. HEILBRON.

Subscribed and sworn to before me this 31 day of July, 1893.
L. B. STEDMAN,
Notary Public in and for the State of Washington,
Residing at Seattle, King County, in said State.

Endorsed: Bond. Filed July 31, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

22 United States Circuit Court for the District of Washington.

In Re M. L. COOVERT, *Habeas Corpus.* # 279.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor for petitioner in the above-entitled cause.

C. E. S. WOOD, *Solicitor,*
Of Williams & Wood, Att'ys.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, R. M. Hopkins, deputy clerk.

19 In the Circuit Court of the United States for the Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT. # 279. On Petition for Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

Know all men by these presents that we, M. L. Coovert, of Vancouver, in the State of Washington, as principal, and G. H. Heilbron, of Seattle, in the State of Washington, as surety, are held and firmly bound unto the clerk of the circuit court of the United States for the district of Washington in the penal sum of two hundred and fifty ($250) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Signed by our hands and sealed with our seals this 31 day of July, 1893.

The condition of the foregoing obligation is such that whereas the said M. L. Coovert, principal above named, was on the 9th day of June, 1893, arrested by George Nerton, sheriff of the county of Clarke, in said State, at Vancouver, in said county and State, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of the State of Washington for said county of Clarke, sitting and acting as a committing magistrate, for an alleged violation by said Coovert of a certain law of said State of Washington declaring it to be unlawful for any person or persons whatever to manufacture, buy, sell, give, or furnish to any one
20 any cigarettes, cigarette paper, or cigarette wrapper, it being charged that the said Coovert had sold to one C. M. McDonald a package of cigarettes, consisting of a slide pasteboard box containing ten paper-wrapped cigarettes, packed in a pasteboard box, said box packed with others in a common pine shipping case, which said package was shipped to said Coovert by the American Tobacco Company from the State of Oregon to the State of Washington; all as more particularly set forth in the petition of the said M. L. Coovert, heretofore filed herein, for a writ of *habeas corpus;* and—

Whereas, on the 22nd day of June, 1893, said cause was duly heard in this court on a demurrer to the petition and on the return of the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893; and

Whereas, in said cause, on the 22nd day of June, 1893, an order was duly made and entered discharging the said M. L. Coovert from the detention and imprisonment complained of in said petition as aforesaid; and

Whereas by said order of the 22nd day of June, 1893, it was ordered and required that the said M. L. Coovert should enter into a bond in the sum of two hundred and fifty ($250.00) dollars, with

one or more sureties, for his appearance to answer the judgment of the appellate court herein:

Now, therefore, if the said M. L. Coovert shall appear and answer the judgment of the appellate court in the premises and abide by and obey such judgment or order as the appellate court may render or make or cause to be rendered or made by the circuit court of the United States above named, then this obligation to be void; otherwise to remain in full force and virtue.

M. L. COOVERT. [SEAL.]
G. H. HEILBRON. [SEAL.]

21 Signed, sealed, & delivered in presence of—
L. B. STEDMAN.

Taken and acknowledged before me this 31 day of July, 1893.
R. M. HOPKINS,
Deputy Clerk U. S. Circuit Court, District of Washington.

UNITED STATES OF AMERICA, }
District of Washington, County of King, } *ss:*

G. H. Heilbron, being first duly sworn, deposes and says that he is the surety named in the foregoing bond; that he is not a sheriff, clerk of court, attorney-at-law, or any other officer of any court in the State of Washington; that he is a citizen, resident, and freeholder in said State of Washington, and is worth at least the sum of two hundred and fifty ($250.00) dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

G. H. HEILBRON.

Subscribed and sworn to before me this 31 day of July, 1893.
L. B. STEDMAN,
Notary Public in and for the State of Washington,
Residing at Seattle, King County, in said State.

Endorsed: Bond. Filed July 31, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

22 United States Circuit Court for the District of Washington.

In Re M. L. COOVERT, *Habeas Corpus.* # 279.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor for petitioner in the above-entitled cause.

C. E. S. WOOD, *Solicitor,*
Of Williams & Wood, Att'ys.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, R. M. Hopkins, deputy clerk.

23 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as attorney for Geo. Nerton, sheriff, in the above-entitled cause.

C. D. BOWLES,
Attorney for Geo. Nerton, Sheriff, &c., Prosecuting Attorney for Clarke County, State of Washington.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, R. M. Hopkins, deputy clerk.

24 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as counsel & solicitor for appellant in the above-entitled cause.

W. C. JONES, *Att'y Gen'l.*

Endorsed: Præcipe for appearance. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

25 In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

Ex Parte: M. L. COOVERT on *Habeas Corpus.*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, ninth judicial circuit, do hereby certify the foregoing twenty-four typewritten pages, numbered from one to twenty-four, inclusive, to be a full, true, and correct copy of the record and of all the proceedings had in the above and therein entitled cause, and that the same constitutes the transcript of the record upon appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 31st day of July, A. D. 1893.

{ Seal United States Circuit Court, District Washington, Northern Division. }

A. REEVES AYRES,
Clerk U. S. Circuit Court for the District of Washington,
By R. M. HOPKINS,
Deputy Clerk.

Endorsed on cover: Case No. 15,563. Washington C. C. U. S. Term No., 1179. The State of Washington, appellant, *vs.* M. L. Coovert. Filed April 3d, 1894.

164-702

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1180~~. 664 362 95

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED APRIL 3, 1894.

(15,564.)

(15,564.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1180.

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 5, 1894.

a In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

In Re M. L. COOVERT on *Habeas Corpus.*

Transcript.

1 To the honorable circuit court of the United States for the district of Washington:

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Your petitioner, M. L. Coovert, complains and shows to the court as follows:

That he is a resident and citizen of the State of Washington, and that he is unjustly and unlawfully detained and imprisoned by George Nerton, sheriff of the county of Clarke, State of Washington, at Vancouver, in the county of Clarke and State of Washington, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of Washington for Clarke county, under the following circumstances:

Your petitioner is a citizen of the United States and so was at the time of his arrest, and was and is a citizen of the State of Washington, and at the time of the grievance herein complained of was and is engaged in the business of a retail tobacco dealer in the city of Vancouver, county of Clarke and State of Washington.

That while so engaged in conducting his business as said retail tobacco dealer he was on the 9th day of June, 1893, arrested by the sheriff of Clarke county, State of Washington, one George Nerton, by the order of and upon a warrant issued by the Honorable E. A. Wiswall, sitting and acting as judge of the superior court of the State of Washington for the county of Clarke, a copy of which warrant is hereto attached, marked "Exhibit No. 1," and which your petitioner prays may be considered as a part of this petition the same as if it was expressly incorporated in it, and he ever since has been kept in confinement and under arrest and now is under arrest as aforesaid and restrained of his liberty upon the following charges, violation of the following law of the State of Washington:

2 "SECTION 1. That it shall be unlawful for any person or persons whatever to manufacture, buy, sell, give or furnish to any one cigarettes, cigarette paper or cigarette wrapper.

"SEC. 2. That whosoever manufactures, buys, sells, gives or furnishes to any person or persons cigarettes, cigarette paper or cigarette wrapper shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned in jail not exceeding six months, or both, for each offense.

"SEC. 3. This act shall be liberally construed to the end that its object shall be enforced.

"SEC. 4. All laws or parts of laws in conflict with the provisions of this act are hereby repealed."

And upon the information, of which a copy is hereto attached and marked as "Exhibit No. 2," and which your petitioner expressly makes a part of this petition the same as if incorporated in it, and prays that it may be so considered.

And that immediately upon the arrest of your petitioner he was taken before the said Honorable E. A. Wiswall, sitting and acting as judge of the superior court as aforesaid and as a committing magistrate; that before said magistrate testimony was given by C. L. MacDonald and E.W. Stapleton as follows: That your petitioner had sold to C. L. MacDonald a package of cigarettes marked Duke's Cameo cigarettes, being ten paper-wrapped cigarettes, enclosed in a slide pasteboard box, with the caution notice required by the laws of the United States printed on the side of said box, and the United States internal revenue stamp for ten cigarettes pasted across the end of said box, and the numbers of manufacturing
3 dist. and State, and number of cigarettes; and the said package so sold by your petitioner was produced before the committing magistrate as evidence and is herewith produced as "Exhibit No. 3" of this petition.

The aforesaid facts your petitioner admits to be true. The said cigarettes were sold in Oregon to your petitioner by the American Tobacco Company, doing business in the State of New York and said cigarettes were manufactured in North Carolina and were shipped to your petitioner in pasteboard boxes, containing twenty such packages, exactly similar to said "Exhibit 3." That said pasteboard boxes are called "cartons" by the trade, and are used simply for the purpose of making convenient parcels of the packages of cigarettes for enumeration and handling at the factory, and to protect the cigarette packages when in storage, and one of such "cartons" is herewith produced as "Exhibit No. 4" of this petition, and is more particularly described as follows: A plain pasteboard box without lettering or mark giving description, which boxes are made in any size desired by dealers.

That said boxes were shipped to your petitioner by said American Tobacco Company from the State of Oregon, enclosed with others in a paper wrapper tied with strong cord, being merely a wrapper for the protection and safety of the goods in transportation, and that heretofore, to wit, April 6, 1893, the honorable the Commissioner of Internal Revenue for the United States decided that such a package as said "Exhibit 3," containing a statutory quantity of cigarettes and properly stamped and cancelled and bearing the caution label and number of the manufacturing district and State and the number of cigarettes contained therein, was an original package as contemplated by United States law and regulations, and that the repacking of said packages in ad-
4 ditional coverings of wood, paper, etc., was optional with the manufacturer. A true copy of the letter of said Commissioner, announcing such decision, is hereto attached as "Exhibit No. 5,"

which your petitioner prays may be considered as a part of this petition to the same effect as if incorporated in it.

That your petitioner is advised by counsel learned in the law that his detention is unlawful, as being in contravention of the constitutional provision of the United States contained in the fourteenth amendment to the Constitution of the United States, section 1; that said detention is also unlawful, as being in contravention of article 1, section 8, of the Constitution of the United States, and that said law under which your petitioner was arrested and is now detained is invalid, as contrary to the provisions of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and deprives your petitioner of liberty and property without due process of law, and also that its effect is to prohibit and regulate commerce among the several States.

And your petitioner claims that said law is invalid in the premises and that he is held without jurisdiction or authority.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said George Nerton, sheriff of the county of Clarke, in the State of Washington, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require.

M. L. COOVERT, *Petitioner.*

C. E. S. WOOD,
Solicitor for Petitioner, of
Williams & Wood, Att'ys.

5 UNITED STATES OF AMERICA, } ss:
District of Washington, }

I, M. L. Coovert, being first duly sworn, depose and say that I am the petitioner named in the foregoing petition; that it has been subscribed by me and I have read the same and know the contents thereof, and that all the statements therein made are true, as I verily believe.

M. L. COOVERT.

Subscribed and sworn to before me this 10th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court,*
Clarke County, Washington.

6 EXHIBIT No. 1.

STATE OF WASHINGTON, } ss:
County of Clarke, }

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county charged on the oath of C. D. Bowles with having, on the 9th day of June, 1893, in said county,

committed the offense of selling cigarettes, and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of $250.00 *dollars* for his appearance to answer at the next session of the superior court as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,

[SEAL.] *County Clerk and Clerk of the Superior Court.*

7 EXHIBIT 2.

STATE OF WASHINGTON, } ss:
County of Clarke, }

I, C. D. Bowles, first being duly sworn according to law, depose and say as follows:

I accuse M. L. Coovert, of Vancouver, Clarke county, State of Washington, of the crime of selling and furnishing cigarettes, contrary to the statute in such cases made and provided, committed as follows: Said M. L. Coovert is a retail tobacco dealer doing business in Vancouver, county of Clarke, State of Washington, and on Friday, June the 9th, 1893, at his said place of business, in said city of Vancouver, the said M. L. Coovert did sell and furnish to one C. L. McDonald one package of cigarettes, more particularly described as follows:

A slide pasteboard box containing ten paper-wrapped cigarettes, said box being marked Duke's Cameo cigarettes, and having upon it U. S. revenue stamp, caution notice, and number of manufacturing district and State, which said package of cigarettes was and is of the value of five cents.

C. D. BOWLES.

Subscribed and sworn to before me this 9th day of June, 1893.

H. R. CAPLES,
County Clerk.

8 EXHIBIT No. 5.

B. H. C. TREASURY DEPARTMENT, H. C. R.
V. E. W. OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

In correspondence on this subject quote the above initials.

WASHINGTON, D. C., *April* 6, 1893.

American Tobacco Company, No. 45 Broadway, New York, N. Y.

GENTLEMEN: In reply to your inquiry of April 3d, submitting a sample package of cigarettes bearing thereon the internal revenue stamp and the printed marks and caution label and inquiring as to the necessity for a re-enclosing in an additional covering of paper,

wood, or other material in placing the same upon the market, you are notified that said package, being a statutory quantity and properly stamped and cancelled and bearing thereon the caution label and the number of the manufactory, the district, and State and the number of cigarettes contained therein, meets with the approval of this bureau, being a proper and original package as contemplated by existing law and regulations.

Therefore the repacking of said packages in additional coverings of wood, paper, etc., is optional with the manufacturer and does not concern this bureau. This option is permissible under existing regulations, series 7, No. 8, Revised —, page 46, and Internal Revenue Record, vol. 32, page 365, dated November 22, 1886.

Respectfully yours,

(Signed) JOHN W. MASON,
Commissioner.

Endorsed: Petition for a writ of *habeas corpus.* Filed June 12, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

9 In the Circuit Court of the United States, Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes Geo. Nerton, sheriff of the county of Clarke, State of Washington, by his attorney, C. D. Bowles, and demurs to the petition filed in the above-entitled cause for the following reason, to wit:

That the facts set forth in said petition do not state facts sufficient to constitute a cause for the relief prayed for, to wit, the issuance of a writ of *habeas corpus.*

C. D. BOWLES,
Attorney for Geo. Nerton and Prosecuting Attorney for the State of Washington for the County of Clarke.

UNITED STATES OF AMERICA, }
District of Washington, } ss:

I, C. D. Bowles, do hereby certify that I am a regularly admitted and practicing attorney in the circuit court of the United States for the district of Washington, and I have examined the demurrer herein set forth and that the same is well founded in point of law.

C. D. BOWLES.

Endorsed: Demurrer. Filed June 13, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

10 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

In Re M. L. COOVERT on *Habeas Corpus.* #280.

Now, on this day, this cause comes on regularly to be heard upon the petition of M. L. Coovert for a writ of *habeas corpus,* and, the

court having duly considered the petition and the argument of C. E. S. Wood, Esq., counsel for petitioner, and of C. D. Bowles, Esq., counsel for George Nerton, sheriff, and being now sufficiently advised, it is ordered that said petition be, and the same is hereby, granted, and the clerk of this court is directed to issue a writ of *habeas corpus*, addressed to George Nerton, sheriff of the county of Clarke, State of Washington, returnable at Seattle June 22, 1893, at the hour of ten o'clock a. m.

11 In the Circuit Court of the United States for the District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Habeas Corpus; Return to the Writ.

To the circuit court of the United States for the district of Washington:

George Nerton, sheriff of Clarke county, State of Washington, to whom the within writ is directed, has now and here before the court the body of M. L. Coovert, therein named, as thereby commanded; and I, the said George Nerton, do hereby certify that the cause of the arrest and detention of said M. L. Coovert is a warrant of commitment to me directed, issued by the Honorable E. A. Wiswall, judge of the superior court for the State of Washington, in the county of Clarke, sitting as committing magistrate, a copy of which warrant of commitment is hereto annexed, marked Exhibit No. 1, and made a part hereof; which said warrant was issued in the manner and under the facts and circumstances and for the purpose set forth in the petition of the said M. L. Coovert herein.

GEO. NERTON,
Sheriff of Clarke County, State of Washington.

12 STATE OF WASHINGTON, } ss:
County of Clarke, }

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for the said county, charged, on the oath of C. D. Bowles, with having on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes; and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said —— has failed to give bail in the sum of — dollars for his appearance to answer at the next session of the superior court, as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal of said court this 9th day of June, 1893.

H. R. CAPLES,
County Clerk and Clerk of the Superior Court.

13 UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

In the Matter of M. L. COOVERT on *Habeas Corpus.*

The President of the United States of America to George Nerton, sheriff of the county of Clarke, Washington, Greeting:

You are hereby commanded that you have the body of M. L. Coovert, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the ninth judicial circuit, district of Washington, at the court-room of said court, in the city of Seattle, on the 22nd day of June, 1893, at 10 o'clock a. m., to do and receive what shall then be considered in the premises; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the 117th.

A. REEVES AYRES, *Clerk,*
[SEAL.] By R. M. HOPKINS, *Deputy.*

Endorsed: Writ of *habeas corpus* and return thereto. Filed on return, this 22d day of June, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

14 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes M. L. Coovert, petitioner, by C. E. S. Wood, his solicitor, and on the return of the sheriff to the writ moves the court for an order discharging the petitioner.

C. E. S. WOOD,
Solicitor for M. L. Coovert.

Endorsed: Motion to discharge petitioner. Filed June 22, 1893, in the U. S. circuit court A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

15 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now, at this time, comes on this cause to be heard upon the petition of M. L. Coovert, duly filed in this court, praying for the issuance of the writ of *habeas corpus.*

And upon the demurrer to said petition, duly filed by George

Nerton, sheriff of Clarke county, Washington, and upon the evidence and exhibits submitted with said petition, and upon the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893, and upon the return of George Nerton, sheriff of Clarke county, State of Washington, to said writ; and the motion to discharge the petitioner and the body of M. L. Coovert in the foregoing writ of *habeas corpus* mentioned being brought before the court at the time and place in said writ named, and the return thereto being read, and the petitioner appearing by Mr. C. E. S. Wood, his solicitor, and moving the court for his discharge, and the sheriff of Clarke county, George Nerton, appearing by C. D. Bowles, his solicitor, and the court having considered the said petition and demurrer thereto, the exhibits, the writ of *habeas corpus* and the return thereto, and the motion to discharge the petitioner, and having heard the argument in the premises and being fully advised, and it appearing to the court that the facts and circumstances are not sufficient to justify the imprisonment of the said M. L. Coovert and no sufficient cause for the detention of the said M. L. Coovert appearing, it is hereby—

Ordered, adjudged, and decreed that the said law of the
16 State of Washington prohibiting the sale of cigarettes and referred to in the petition is in contravention of article 1 of section 8 of the Constitution of the United States and null and void in so far as it prohibits or attempts to prohibit the selling, giving, or furnishing to any one by the importer of a slide pasteboard box containing ten paper-wrapped cigarettes, having upon it the U. S. internal revenue stamp, and caution notice as required by law, also number of manufacturer's district and State, which box was received by the importer from without the State of Washington, packed in a pasteboard box or carton, and said carton enclosed with others in a paper wrapper tied with strong cord, and that the said M. L. Coovert be by said George Nerton, sheriff of Clarke county, forthwith discharged from imprisonment and detention for the cause as in said petition aforesaid.

And it is further ordered, adjudged, and decreed that the said M. L. Coovert, petitioner, shall enter into a recognizance in the sum of two hundred and fifty ($250) dollars with the clerk of this court, with one or more sureties, for his appearance to answer the judgment of the appellate court in the premises.

C. H. HANFORD, *Judge.*

Dated this 22nd day of June, 1893.

Endorsed: Judgment. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

17 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. COOVERT for a Writ of *Habeas Corpus*. } Petition on Appeal.

Comes now the State of Washington, by the attorney general, and, considering itself aggrieved by the order of the above-entitled

court in the above-entitled proceeding, of date June 22nd, 1893, discharging the said M. L. Coovert from the custody of the sheriff of Clarke county upon the writ of *habeas corpus* heretofore sued out by him, doth hereby appeal from the said order of said court heretofore made, as aforesaid, to the Supreme Court of the United States, and prays that this appeal be allowed, and that a transcript of all the proceedings and papers upon which said order was made, duly authenticated, may be transmitted to the said Supreme Court of the United States.

W. C. JONES,
Attorney General for the State of Washington.

Dated this 23 day of June, 1893.

18 In the Circuit Court of the United States for the District of Washington, Northern Division.

In the Matter of the Application of M. L. COOVERT for a Writ of *Habeas Corpus*. } Order on Appeal.

Now, on this 23rd day of June, A. D. 1893, comes the State of Washington, by W. C. Jones, Esquire, attorney general for said State, and prays that an appeal may be allowed to the Supreme Court of the United States from the order heretofore made in this court in the above-entitled cause on the 22nd day of June, A. D. 1893, discharging one M. L. Coovert from the custody of the sheriff of the county of Clarke, State of Washington, and that all the papers, proceedings, and documents relating to said cause may be transmitted by copy thereof, duly authenticated, to the Supreme Court of the United States next to be holden.

And the court, being fully advised in the premises, and the said M. L. Coovert appearing in open court by J. C. Flanders, Esquire, his attorney—

It is ordered that said appeal be, and the same is hereby, allowed.

Further ordered that certified copies, duly authenticated, of all papers, documents, and proceedings in said cause be transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on said appeal be fixed at the sum of — dollars.

Done in open court this 23rd day of June, A. D. 1893.

C. H. HANFORD,
District Judge, Presiding in said Circuit Court.

Endorsed: Order allowing appeal. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

In the Circuit Court of the United States for the Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT. # 280. On Petition for Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

Know all men by these presents that we, M. L. Coovert, of Vancouver, in the State of Washington, as principal, and G. H. Heilbron, of Seattle, in the State of Washington, as surety, are held and firmly bound unto the clerk of the circuit court of the United States for the district of Washington in the penal sum of two hundred and fifty ($250) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Signed by our hands and sealed with our seals this 31 day of July, A. D. 1893.

The condition of the foregoing obligation is such that whereas the said M. L. Coovert, principal above named, was on the 9th day of June, 1893, arrested by George Nerton, sheriff of the county of Clarke, in said State, at Vancouver, in said county and State, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of the State of Washington for said county of Clarke, sitting and acting as a committing magistrate, for an alleged violation by said Coovert of a certain law of the said State of Washington declaring it to be unlawful for any person or persons whatever to manufacture, buy, sell, give, or furnish to any one any cigarettes, cigarette paper, or cigarette wrapper, it being charged that the said M. L. Coovert had sold to one C. M. McDonald a package of cigarettes, consisting of a slide pasteboard box containing ten paper-wrapped cigarettes, packed in a pasteboard box, said box enclosed with others in a paper wrapper, tied with strong cord, which said package was shipped to said Coovert by the American Tobacco Company from the State of Oregon to the State of Washington; all as more particularly set forth in the petition of the said M. L. Coovert, heretofore filed herein, for a writ of *habeas corpus;* and

Whereas, on the 22nd day of June, 1893, said cause was duly heard in this court on a demurrer to the petition and on the return of the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893; and

Whereas, in said cause, on the 22nd day of June, 1893, an order was duly made and entered discharging the said M. L. Coovert from the detention and imprisonment complained of in said petition as aforesaid; and

Whereas by said order of the 22nd day of June, 1893, it was ordered and required that the said M. L. Coovert should enter into a bond in the sum of two hundred and fifty ($250) dollars, with one or more sureties, for his appearance to answer the judgment of the appellate court herein:

Now, therefore, if the said M. L. Coovert shall appear and answer the judgment of the appellate court in the premises and abide by and obey such judgment or order as the appellate court may render or make or cause to be rendered or made by the circuit court of the United States above named, then this obligation to be void; otherwise to remain in full force and virtue.

21 M. L. COOVERT. [SEAL.]
G. H. HEILBRON. [SEAL.]

Signed, sealed, and delivered in presence of—
L. B. STEDMAN.

Taken and acknowledged before me this 31 day of July, 1893.
R. M. HOPKINS,
Deputy Clerk U. S. Circuit Court, District of Washington.

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

G. H. Heilbron, being first duly sworn, deposes and says that he is the surety named in the foregoing bond; that he is not a sheriff, clerk of court, attorney-at-law, or any other officer of any court in the State of Washington; that he is a citizen, resident, and freeholder in said State of Washington, and is worth at least the sum of two hundred and fifty ($250.00) dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

G. H. HEILBRON.

Subscribed and sworn to before me this 31 day of July, 1893.
L. B. STEDMAN,
Notary Public in and for the State of Washington,
Residing at Seattle, King County, in said State.

Endorsed: Bond. Filed Jul- 31, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

22 United States Circuit Court for the District of Washington.

In Re M. L. COOVERT, *Habeas Corpus.* # 280.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor for petitioner in the above-entitled cause.

C. E. S. WOOD, *Solicitor,*
Of Williams & Wood, Att'ys.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, R. M. Hopkins, deputy clerk.

23 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above entitled court:

You will please enter my appearance as attorney for Geo. Nerton, sheriff, in the above-entitled cause.

C. D. BOWLES,
Pros. Att'y for the State of Washington, Clarke County, & Att'y for Geo. Nerton, Sheriff.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, R. M. Hopkins, deputy clerk.

24 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as counsel & solicitor for appellant in the above-entitled cause.

W. C. JONES, *Att'y Gen'l.*

Endorsed: Præcipe for appearance. Filed June 23, 1893. A. Reeves Ayres, clerk, R. M. Hopkins, deputy clerk.

25 In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

Ex Parte: M. L. COOVERT on *Habeas Corpus.*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, ninth judicial circuit, do hereby certify the foregoing twenty-four typewritten pages, numbered from one to twenty-four, inclusive, to be a full, true, and correct copy of the record and of all the proceedings had in the above and therein entitled cause, and that the same constitutes the transcript of the record upon appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 31st day of July, A. D. 1893.

{ Seal United States Circuit Court, District Washington, Northern Division. }

A. REEVES AYRES,
Clerk U. S. Circuit Court for the District of Washington,
By R. M. HOPKINS,
Deputy Clerk.

Endorsed on cover: Case No. 15,564. Washington C. C. U. S. Term No., 1180. The State of Washington, appellant, *vs.* M. L. Coovert. Filed April 3d, 1894.

164-402

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1181~~. 685 364 96

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED APRIL 3, 1894.

(15,565.)

(15,565.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1181.

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 5, 1894.

a In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

In Re M. L. COOVERT on *Habeas Corpus.*

Transcript.

1 To the honorable circuit court of the United States for the district of Washington:

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Your petitioner, M. L. Coovert, complains and shows to the court as follows:

That he is a citizen and resident of the State of Washington, and that he is unjustly and unlawfully detained and imprisoned by George Nerton, sheriff of the county of Clarke, State of Washington, at Vancouver, in the county of Clarke and State of Washington, by virtue of a warrant of committment issued by E. A. Wiswall, judge of the superior court of Washington for Clarke county, under the following circumstances:

Your petitioner is a citizen of the United States and so was at the time of his arrest, and was and is a citizen of the State of Washington, and at the time of the grievance herein complained of was and is engaged in the business of a retail tobacco dealer in the city of Vancouver, county of Clarke and State of Washington.

That while so engaged in conducting his business as said retail tobacco dealer he was on the 9th day of June, 1893, arrested by the sheriff of Clarke county, State of Washington, one George Nerton, by the order of and upon a warrant issued by the Honorable E. A. Wiswall, sitting and acting as judge of the superior court of the State of Washington for the county of Clarke, a copy of which warrant is hereto attached, marked "Exhibit No. 1," and which your petitioner prays may be considered as a part of this petition the same as if it was expressly incorporated in it, and he ever since has been kept in confinement and under arrest and

2 now is under arrest as aforesaid and restrained of his liberty upon the following charges, violation of the following law of the State of Washington:

"SECTION 1. That it shall be unlawful for any person or persons whatever to manufacture, buy, sell, give or furnish to any one cigarettes, cigarette paper or cigarette wrapper.

"SEC. 2. That whosoever manufactures, buys, sells, gives or furnishes to any person or persons cigarettes, cigarette paper or cigarette wrapper shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned in jail not exceeding six months, or both, for each offense.

"SEC. 3. This act shall be liberally construed to the end that its object shall be enforced.

"SEC. 4. All laws or parts of laws in conflict with the provisions of this act are hereby repealed."

And upon the information, of which a copy is hereto attached and marked as "Exhibit No. 2," and which your petitioner expressly makes a part of this petition the same as if incorporated in it, and prays that it may be so considered.

And that immediately upon the arrest of your petitioner he was taken before the said Honorable E. A. Wiswall, sitting and acting as judge of the superior court as aforesaid and as a committing magistrate; that before said magistrate testimony was given by C. L. MacDonald and E.W. Stapleton as follows: That your petitioner had sold to C. L. MacDonald a package of cigarettes consisting of five boxes of Vanity Fair cigarettes, each box holding ten paper-wrapped cigarettes enclosed in a slide pasteboard box with the caution notice required by the laws of the United States printed on the side of said box, and the United States internal
3 revenue stamp for ten cigarettes pasted on said box, and the number of cigarettes in said box, and number of mfg. dist. and State, upon it; and the said package so sold by your petitioner was produced before the committing magistrate as evidence and is herewith produced as "Exhibit No. 3" of this petition.

The aforesaid facts your petitioner admits to be true. The said cigarettes were sold in Oregon to your petitioner by the American Tobacco Company, doing business in the State of New York and said cigarettes were manufactured in New York and were shipped to your petitioner in wooden packing cases, containing twenty such packages, exactly similar to said "Exhibit 3." Said pasteboard boxes have no mark upon them, and are made in assorted sizes to meet the wishes of the trade.

That said packages were shipped to your petitioner by said American Tobacco Company from the State of Oregon, enclosed in common pine shipping cases, being merely packing cases for the protection and safety of the goods in transportation, and that heretofore, to wit, April 6, 1893, the honorable the Commissioner of Internal Revenue for the United States decided that such a package as said "Exhibit 3," containing a statutory quantity of cigarettes and properly stamped and cancelled and bearing the caution label and number of the manufacturing district and State and the number of cigarettes contained therein, was an original package as contemplated by United States law and regulations, and that the repacking of said packages in additional coverings of wood, paper, etc., was optional with the manufacturer. A true copy of the
4 letter of said Commissioner, announcing such decision, is hereto attached as "Exhibit No. 5," which your petitioner prays may be considered as a part of this petition to the same effect as if incorporated in it.

That your petitioner is advised by counsel learned in the law that his detention is unlawful, as being in contravention of the constitutional provision of the United States contained in the fourteenth amendment to the Constitution of the United States, section 1; that said detention is also unlawful, as being in contravention

of article 1, section 8, of the Constitution of the United States, and that said law under which your petitioner was arrested and is now detained is invalid, as contrary to the provisions of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and deprives your petitioner of liberty and property without due process of law, and also that its effect is to prohibit and regulate commerce among the several States.

And your petitioner claims that said law is invalid in the premises and that he is held without jurisdiction or authority.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said George Nerton, sheriff of the county of Clarke, in the State of Washington, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require.

M. L. COOVERT, *Petitioner.*

C. E. S. WOOD,
Solicitor for Petitioner, of
Williams & Wood.

5 UNITED STATES OF AMERICA, } ss:
District of Washington, }

I, M. L. Coovert, being first duly sworn, depose and say that I am the petitioner named in the foregoing petition; that it has been subscribed by me and I have read the same and know the contents thereof, and that all the statements therein made are true, as I verily believe.

M. L. COOVERT.

Subscribed and sworn to before me this 10th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court,*
Clarke County, Washington.

EXHIBIT NO. 1.

STATE OF WASHINGTON, } ss:
County of Clarke, }

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county charged on the oath of C. D. Bowles with having, on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes, and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of $250.00 *dollars* for his appearance to answer at the next session of the superior court as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to re-

ceive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

6 Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,

[SEAL.] *County Clerk and Clerk of the Superior Court.*

EXHIBIT 2.

STATE OF WASHINGTON, } ss:
County of Clarke, }

I, C. D. Bowles, first being duly sworn according to law, depose and say as follows:

I accuse M. L. Coovert, of Vancouver, Clarke county, State of Washington, of the crime of selling and furnishing cigarettes, contrary to the statute in such cases made and provided, committed as follows: Said M. L. Coovert is a retail tobacco dealer doing business in Vancouver, county of Clarke, State of Washington, and on Friday, June the 9th, 1893, at his said place of business, in said city of Vancouver, the said M. L. Coovert did sell and furnish to one C. L. McDonald one package of cigarettes, more particularly described as follows: A pasteboard box with loose lifting top and without mark of any description upon part of said box, said box containing five packages of Vanity Fair paper-wrapped cigarettes, each of said packages having upon it the name of the brand of cigarettes, the statutory caution notice, U. S. revenue stamp duly cancelled, and number of the manufacturing district and State, and each of said packages containing ten cigarettes.

Which said package of cigarettes was and is of the value of twenty-five cents.

C. D. BOWLES.

Subscribed and sworn to before me this 9th day of June, 1893.

H. R. CAPLES,
County Clerk.

7 EXHIBIT No. 5.

B. H. C. TREASURY DEPARTMENT, H. C. R.
V. E. W. OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

In correspondence on this subject quote the above initials.

WASHINGTON, D. C., *April* 6, 1893.

American Tobacco Company, No. 45 Broadway, New York, N. Y.

GENTLEMEN: In reply to your inquiry of April 3d, submitting a sample package of cigarettes bearing thereon the internal revenue stamp and the printed marks and caution label and inquiring as to the necessity for a re-enclosing in an additional covering of paper, wood, or other material in placing the same upon the market, you are notified that said package, being a statutory quantity and properly stamped and cancelled and bearing thereon the caution label and the number of the manufactory, the district, and State

and the number of cigarettes contained therein, meets with the approval of this bureau, being a proper and original package as contemplated by existing law and regulations.

Therefore the repacking of said packages in additional coverings of wood, paper, etc., is optional with the manufacturer and does not concern this bureau. This option is permissible under existing regulations, series 7, No. 8, Revised —, page 46, and Internal Revenue Record, vol. 32, page 365, dated November 22, 1886.

Respectfully yours,

(Signed) JOHN W. MASON,
Commissioner.

Endorsed: Petition for a writ of *habeas corpus.* Filed
8 June 12, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

9 In the Circuit Court of the United States, Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes Geo. Nerton, sheriff of the county of Clarke, State of Washington, by his attorney, C. D. Bowles, and demurs to the petition filed in the above-entitled cause for the following reason, to wit:

That the facts set forth in said petition do not state facts sufficient to constitute a cause for the relief prayed for, to wit, the issuance of a writ of *habeas corpus.*

C. D. BOWLES,
Attorney for Geo. Nerton and Prosecuting Attorney for the State of Washington for the County of Clarke.

UNITED STATES OF AMERICA, }
District of Washington, } *ss:*

I, C. D. Bowles, do hereby certify that I am a regularly admitted and practicing attorney in the circuit court of the United States for the district of Washington, and I have examined the demurrer herein set forth and that the same is well founded in point of law.

C. D. BOWLES.

Endorsed: Demurrer. Filed June 13, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

10 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

In Re M. L. COOVERT on *Habeas Corpus.* #281.

Now, on this day, this cause comes on regularly to be heard upon the petition of M. L. Coovert for a writ of *habeas corpus,* and, the court having duly considered the petition and the argument of C. E. S. Wood, Esq., counsel for petitioner, and of C. D. Bowles, Esq.,

counsel for George Nerton, sheriff, and being now sufficiently advised, it is ordered that said petition be, and the same is hereby, granted, and the clerk of this court is directed to issue a writ of *habeas corpus*, addressed to George Nerton, sheriff of the county of Clarke, State of Washington, returnable at Seattle June 22, 1893, at the hour of ten o'clock a. m.

11 In the Circuit Court of the United States for the District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Habeas Corpus; Return to the Writ.

To the circuit court of the United States for the district of Washington:

George Nerton, sheriff of Clarke county, State of Washington, to whom the within writ is directed, has now and here before the court the body of M. L. Coovert, therein named, as thereby commanded; and I, the said George Nerton, do hereby certify that the cause of the arrest and detention of said M. L. Coovert is a warrant of commitment to me directed, issued by the Honorable E. A. Wiswall, judge of the superior court for the State of Washington, in the county of Clarke, sitting as committing magistrate, a copy of which warrant of commitment is hereto annexed, marked Exhibit No. 1, and made a part hereof; which said warrant was issued in the manner and under the facts and circumstances and for the purpose set forth in the petition of the said M. L. Coovert herein.

GEO. NERTON,
Sheriff of Clarke County, State of Washington.

12 STATE OF WASHINGTON, } ss:
County of Clarke, }

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county, charged, on the oath of C. D. Bowles, with having on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes; and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of — dollars for his appearance to answer at the next session of the superior court, as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court.*

13 UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

In the Matter of M. L. COOVERT on *Habeas Corpus.*

The President of the United States of America to George Nerton, sheriff of the county of Clarke, Washington, Greeting:

You are hereby commanded that you have the body of M. L. Coovert, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the ninth judicial circuit, district of Washington, at the court-room of said court, in the city of Seattle, on the 22nd day of June, 1893, at 10 o'clock a. m., to do and receive what shall then be considered in the premises; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the 117th.

A. REEVES AYRES, *Clerk,*

[SEAL.] By R. M. HOPKINS, *Deputy Clerk.*

Endorsed: Writ of *habeas corpus* and return thereto. Filed on return, this 22d day of June, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

14 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes M. L. Coovert, petitioner, by C. E. S. Wood, his solicitor, and on the return of the sheriff to the writ moves the court for an order discharging the petitioner.

C. E. S. WOOD,
Solicitor for M. L. Coovert.

Endorsed: Motion to discharge petitioner. Filed June 22, 1893, A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

15 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now, at this time, comes on this cause to be heard upon the petition of M. L. Coovert, duly filed in this court, praying for the issuance of the writ of *habeas corpus.*

And upon the demurrer to said petition, duly filed by George Nerton, sheriff of Clarke county, Washington, and upon the evi-

dence and exhibits submitted with said petition, and upon the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893, and upon the return of George Nerton, sheriff of Clarke county, State of Washington, to said writ; and the motion to discharge the petitioner and the body of M. L. Coovert in the foregoing writ of *habeas corpus* mentioned being brought before the court at the time and place in said writ named, and the return thereto being read, and the petitioner appearing by Mr. C. E. S. Wood, his solicitor, and moving the court for his discharge, and the sheriff of Clarke county, George Nerton, appearing by C. D. Bowles, his solicitor, and the court having considered the said petition and demurrer thereto, the exhibits, the writ of *habeas corpus* and the return thereto; and the motion to discharge the petitioner, and having heard the argument in the premises and being fully advised, and it appearing to the court that the facts and circumstances are not sufficient to justify the imprisonment of the said M. L. Coovert and no sufficient cause for the detention of the said M. L. Coovert appearing, it is hereby—

Ordered, adjudged, and decreed that the said law of the State of Washington prohibiting the sale of cigarettes and referred
16 to in the petition is in contravention of article 1 of section 8 of the Constitution of the United States and null and void in so far as it prohibits or attempts to prohibit the selling, giving, or furnishing to any one by the importer of a package of cigarettes consisting of five boxes of cigarettes, each box holding ten paper-wrapped cigarettes, and being a slide pasteboard box and having upon it a U. S. internal revenue stamp as required by law, also number of manufacturer's district and State, which package was received by the importer from without the State of Washington, packed in a wooden packing case & said packing case packed with others in a common pine shipping case, and that the said M. L. Coovert be by said George Nerton, sheriff of Clarke county, forthwith discharged from imprisonment and detention for the cause as in said petition aforesaid.

And it is further ordered, adjudged, and decreed that the said M. L. Coovert, petitioner, shall enter into a recognizance in the sum of two hundred and fifty ($250.00) dollars with the clerk of this court, with one or more sureties, for his appearance to answer the judgment of the appellate court in the premises.

C. H. HANFORD, *Judge.*

Dated this 22nd day of June, 1893.

Endorsed: Judgment. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

17 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. COOVERT for a Writ of *Habeas Corpus.* } Petition on Appeal.

Comes now the State of Washington, by the attorney general, and, considering itself aggrieved by the order of the above-entitled court in the above-entitled proceeding, of date June 22nd, 1893,

discharging the said M. L. Coovert from the custody of the sheriff of Clarke county upon the writ of *habeas corpus* heretofore sued out by him, doth hereby appeal from the said order of said court heretofore made, as aforesaid, to the Supreme Court of the United States, and prays that this appeal be allowed, and that a transcript of all the proceedings and papers upon which said order was made, duly authenticated, may be transmitted to the said Supreme Court of the United States.

W. C. JONES,
Attorney General for the State of Washington.

Dated this 23 day of June, 1893.

18 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. COOVERT for a Writ of *Habeas Corpus.* } Order on Appeal.

Now, on this 23rd day of June, A. D. 1893, comes the State of Washington, by W. C. Jones, Esquire, attorney general for said State, and prays that an appeal may be allowed to the Supreme Court of the United States from the order heretofore made in this court in the above-entitled cause on the 22nd day of June, A. D. 1893, discharging one M. L. Coovert from the custody of the sheriff of the county of Clarke, State of Washington, and that all the papers, proceedings, and documents relating to said cause may be transmitted by copy thereof, duly authenticated, to the Supreme Court of the United States next to be holden.

And the court, being fully advised in the premises, and the said M. L. Coovert appearing in open court by J. C. Flanders, Esquire, his attorney—

It is ordered that said appeal be, and the same is hereby, allowed.

Further ordered that certified copies, duly authenticated, of all papers, documents, and proceedings in said cause be transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on said appeal be fixed at the sum of — dollars.

Done in open court this 23rd day of June, A. D. 1893.

C. H. HANFORD,
District Judge, Presiding in said Circuit Court.

Endorsed: Order allowing appeal. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

19 In the Circuit Court of the United States for the Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT. # 281. On Petition for Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

Know all men by these presents that we, M. L. Coovert, of Vancouver, in the State of Washington, as principal, and G. H. Heilbron, of Seattle, in the State of Washington, as surety, are held and firmly bound unto the clerk of the circuit court of the United States for the district of Washington in the penal sum of two hundred and fifty ($250) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Signed by our hands and sealed with our seals this 31 day of July, A. D. 1893.

The condition of the foregoing obligation is such that whereas the said M. L. Coovert, principal above named, was on the 9th day of June, 1893, arrested by George Nerton, sheriff of the county of Clarke, in said State, at Vancouver, in said county and State, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of the State of Washington for said county of Clarke, sitting and acting as a committing magistrate, for an alleged violation by said Coovert of a certain law of the said State of Washington declaring it to be unlawful for any person or persons whatever to manufacture, buy, sell, give, or furnish to any one any cigarettes, cigarette paper, or cigarette wrapper, it being

20 charged that the said Coovert had sold to one C. M. McDonald a package of cigarettes, consisting of five (5) boxes of cigarettes, each box holding ten (10) paper-wrapped cigarettes, which said package was shipped to said Coovert by the American Tobacco Company from the State of Oregon to the State of Washington; all as more particularly set forth in the petition of the said M. L. Coovert, heretofore files herein, for a writ of *habeas corpus;* and

Whereas, on the 22nd day of June, 1893, said cause was duly heard in this court on a demurrer to the petition and on the return of the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893; and

Whereas, in said cause, on the 22nd day of June, 1893, an order was duly made and entered discharging the said M. L. Coovert from the detention and imprisonment complained of in said petition as aforesaid; and

Whereas by said order of the 22nd day of June, 1893, it was ordered and required that the said M. L. Coovert should enter into a bond in the sum of two hundred and fifty ($250.00) dollars, with one or more sureties, for his appearance to answer the judgment of the appellate court herein:

Now, therefore, if the said M. L. Coovert shall appear and answer

the judgment of the appellate court in the premises and abide by and obey such judgment or order as the appellate court may render or make or cause to be rendered or made by the circuit court of the United States above named, then this obligation to be void; otherwise to remain in full force and virtue.

M. L. COOVERT. [SEAL.]
G. H. HEILBRON. [SEAL.]

Signed, sealed, and delivered in presence of—
L. B. STEDMAN.

Taken and acknowledged before me this 31 day of July, 1893.
21 R. M. HOPKINS,
Deputy Clerk U. S. Circuit Court, District of Washington.

UNITED STATES OF AMERICA, } ss:
District of Washington, County of King, }

G. H. Heilbron, being first duly sworn, deposes and says that he is the surety named in the foregoing bond; that he is not a sheriff, clerk of court, attorney-at-law, or any other officer of any court in the State of Washington; that he is a citizen, resident, and freeholder in said State of Washington, and is worth at least the sum of two hundred and fifty ($250.00) dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

G. H. HEILBRON.

Subscribed and sworn to before me this 31 day of July, 1893.
L. B. STEDMAN,
Notary Public in and for the State of Washington,
Residing at Seattle, King County, in said State.

Endorsed: Bond. Filed Jul- 31, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

22 United States Circuit Court for the District of Washington.

In Re M. L. COOVERT, *Habeas Corpus.* # 281.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor for petitioner in the above-entitled cause.

C. E. S. WOOD, *Solicitor,*
Of Williams & Wood, Att'ys.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, R. M. Hopkins, deputy clerk.

23 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as attorney for Geo. Nerton, sheriff, in the above-entitled cause.

C. D. BOWLES,
Prosecuting Attorney for Clarke County, State of Washington, and Attorney for Geo. Nerton, Sheriff.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, R. M. Hopkins, deputy clerk.

24 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as counsel & solicitor for appellant in the above-entitled cause.

W. C. JONES, *Att'y Gen'l.*

Endorsed: Præcipe for appearance. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

25 In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

Ex Parte: M. L. COOVERT on *Habeas Corpus.*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, ninth judicial circuit, do hereby certify the foregoing twenty-four typewritten pages, numbered from one to twenty-four, inclusive, to be a full, true, and correct copy of the record and of all the proceedings had in the above and therein entitled cause, and that the same constitutes the transcript of the record upon appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 31st day of July, A. D. 1893.

{ Seal United States Circuit Court, District Washington, Northern Division. }

A. REEVES AYRES,
Clerk United States Circuit Court for the District of Washington,
By R. M. HOPKINS,
Deputy Clerk.

Endorsed on cover: Case No. 15,565. Washington C. C. U. S. Term No., 1181. The State of Washington, appellant, *vs.* M. L. Coovert. Filed April 3d, 1894.

164-702

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1182~~. 686 365 97

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED APRIL 3, 1894.

(15,566.)

(15,566.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 1182.

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 5, 1894.

a In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

In Re M. L. COOVERT on *Habeas Corpus.*

Transcript.

1 To the honorable circuit court of the United States for the district of Washington:

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Your petitioner, M. L. Coovert, complains and shows to the court as follows:

That he is a citizen and resident of the State of Washington, and that he is unjustly and unlawfully detained and imprisoned by George Nerton, sheriff of the county of Clarke, State of Washington, at Vancouver, in the county of Clarke and State of Washington, by virtue of a warrant of committment issued by E. A. Wiswall, judge of the superior court of Washington for Clarke county, under the following circumstances:

Your petitioner is a citizen of the United States and so was at the time of his arrest, and was and is a citizen of the State of Washington, and at the time of the grievance herein complained of was and is engaged in the business of a retail tobacco dealer in the city of Vancouver, county of Clarke and State of Washington.

That while so engaged in conducting his business as said retail tobacco dealer he was on the ninth day of June, 1893, arrested by the sheriff of Clarke county, State of Washington, one George Nerton, by the order of and upon a warrant issued by the Honorable E. A. Wiswall, sitting and acting as judge of the superior court of the State of Washington for the county of Clarke, a copy of which warrant is hereto attached, marked "Exhibit No. 1," which your petitioner prays may be considered as a part of this petition the same as if it was expressly incorporated in it, and he ever since has been kept in confinement and under arrest and

2 now is under arrest as aforesaid and restrained of his liberty upon the following charges, violation of the following law of the State of Washington:

"SECTION 1. That it shall be unlawful for any person or persons whatever to manufacture, buy, sell, give or furnish to any one cigarettes, cigarette paper or cigarette wrapper.

"SEC. 2. That whosoever manufactures, buys, sells, gives or furnishes to any person or persons cigarettes, cigarette paper or cigarette wrapper shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned in jail not exceeding six months, or both, for each offense.

"SEC. 3. This act shall be liberally construed to the end that its object shall be enforced.

"SEC. 4. All laws or parts of laws in conflict with the provi sions of this act are hereby repealed."

And upon the affidavit, of which a copy is hereto attached and marked as "Exhibit No. 2," and which your petitioner expressly makes a part of this petition the same as if incorporated in it, and prays that it may be so considered.

And that immediately upon the arrest of your petitioner he was taken before the said Honorable E. A. Wiswall, sitting and acting as judge of the superior court as aforesaid and as a committing magistrate; that before said magistrate testimony was given by C. L. MacDonald and E.W. Stapleton as follows: That your petitioner had sold to C. L. MacDonald a box of packages of cigarettes marked Pet cigarettes, being fifty packages of ten paper-wrapped cigar-
3 ettes enclosed in paper and tin-foil wrappers, each bundle having the number of cigarettes and the number of the mfg. dist. and State and the caution notice required by the laws of the United States printed on the side of the outer wrapper of said bundle, and the United States internal revenue stamp for ten cigarettes pasted around said bundle.

And the said package so sold by your petitioner was produced before the committing magistrate as evidence, and is herewith produced as "Exhibit No. 3" of this petition.

The aforesaid facts your petitioner admits to be true. The said cigarettes were sold in Oregon to your petitioner by the American Tobacco Company, doing business in the State of New York, and said cigarettes were manufactured in Virginia and were shipped to your petitioner in wooden packing cases; that said pasteboard boxes are called "cartons" by the trade, an- are used simply for the purpose of making convenient parcels of the packages of cigarettes for enumeration and handling at the factory, and to protect the cigarette packages when in storage, and one of such "cartons" is herewith produced as "Exhibit No. 4" of this petition, and is more particularly described as follows: A plain pasteboard box without mark of any kind, made in assorted sizes to suit the various demands of individual dealers.

That said cartons were shipped to your petitioner by said American Tobacco Company from the State of Oregon, enclosed in common pine shipping cases, being merely packing cases for the protection and safety of the goods in transportation, and that heretofore, to wit, April 6, 1893, the honorable the Commissioner of Internal Revenue for the United States decided that such a package
4 as said "Exhibit 3," containing a statutory quantity of cigarettes and properly stamped and cancelled and bearing the caution label and number of manufacturing district and State and the number of cigarettes contained therein, was an original package as contemplated by United States law and regulations, and that the repacking of said packages in additional coverings of wood, paper, etc., was optional with the manufacturer. A true copy of the letter of said Commissioner, announcing such decision, is hereto attached as "Exhibit No. 5," which your petitioner prays may be consid-

ered as a part of this petition to the same effect as if incorporated in it.

That your petitioner is advised by counsel learned in the law that his detention is unlawful, as being in contravention of the constitutional provision of the United States contained in the fourteenth amendment of the Constitution of the United States, section 1; that said detention is also unlawful, as being in contravention of article 1, section 8, of the Constitution of the United States, and that said law under which your petitioner was arrested and is now detained is invalid, as contrary to the provisions of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and deprives your petitioner of liberty and property without due process of law, and also that its effect is to prohibit and regulate commerce among the several States.

And your petitioner claims that said law is invalid in the premises and that he is held without jurisdiction or authority.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said George Nerton, sheriff of the county of Clarke, in the State of Washington, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may require.

M. L. COOVERT, *Petitioner.*

C. E. S. WOOD,
Solicitor for Petitioner, of
Williams & Wood, Att'ys.

UNITED STATES OF AMERICA, }
District of Washington, } ss:

I, M. L. Coovert, being first duly sworn, depose and say that I am the petitioner named in the foregoing petition; that it has been subscribed by me and I have read the same and know the contents thereof, and that all the statements therein made are true, as I verily believe.

M. L. COOVERT.

Subscribed and sworn to before me this 10th day of June, 1893.

H. R. CAPLES,
[SEAL.] *County Clerk and Clerk of the Superior Court,*
Clarke County, Washington.

EXHIBIT No. 1.

STATE OF WASHINGTON, }
County of Clarke, } ss:

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county charged on the oath of C. D. Bowles with having, on the 9th day of June, 1893, in said county,

committed the offense of selling cigarettes, and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said M. L. Coovert has failed to give bail in the sum of $250.00 *dollars* for his appearance to answer at the next session of the superior court as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and seal this 9th day of June, 1893.

H. R. CAPLES,

[SEAL.] *County Clerk and Clerk of the Superior Court.*

7 EXHIBIT 2.

STATE OF WASHINGTON, } ss:
County of Clarke, }

I, C. D. Bowles, first being duly sworn according to law, depose and say as follows:

I accuse M. L. Coovert, of Vancouver, Clarke county, State of Washington, of the crime of selling and furnishing cigarettes, contrary to the statute in such cases made and provided, committed as follows: Said M. L. Coovert is a retail tobacco dealer doing business in Vancouver, county of Clarke, State of Washington, and on Friday, June the 9th, 1893, at his said place of business, in said city of Vancouver, the said M. L. Coovert did sell and furnish to one C. L. McDonald one package of cigarettes, more particularly described as follows:

A pasteboard box with loose lifting cover, not sealed in any way, and having on said box the name of the manufacturer and brand of cigarettes, but no stamp, caution notice, or number of manufacturing district or State, and said box containing fifty bundles of "Pet" paper-wrapped cigarettes, ten cigarettes in each bundle, and each bundle being wrapped in tin-foil with one outer paper wrapper bearing the name of the brand of cigarettes, the statutory caution notice, number of manufacturing district and State, and having pasted around it the required U. S. revenue stamp, duly cancelled; which said package of cigarettes was and is of the value of five dollars.

C. D. BOWLES.

Subscribed and sworn to before me this 9th day of June, 1893.

H. R. CAPLES,
County Clerk.

8 EXHIBIT No. 5.

B. H. C. TREASURY DEPARTMENT, H. C. R.
V. E. W. OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

In correspondence on this subject quote the above initials.

WASHINGTON, D. C., *April* 6, 1893.

American Tobacco Company, No. 45 Broadway, New York, N. Y.

GENTLEMEN: In reply to your inquiry of April 3d, submitting a sample package of cigarettes bearing thereon the internal revenue stamp and the printed marks and caution label and inquiring as to the necessity for a re-enclosing in an additional covering of paper, wood, or other material in placing the same upon the market, you are notified that said package, being a statutory quantity and properly stamped and cancelled and bearing thereon the caution label and the number of the manufactory, the district, and State and the number of cigarettes contained therein, meets with the approval of this bureau, being a proper and original package as contemplated by existing law and regulations.

Therefore the repacking of said packages in additional coverings of wood, paper, etc., is optional with the manufacturer and does not concern this bureau. This option is permissible under existing regulations, series 7, No. 8, Revised —, page 46, and Internal Revenue Record, vol. 32, page 365, dated November 22, 1886.

Respectfully yours,

(Signed) JOHN W. MASON,
Commissioner.

Endorsed: Petition for a writ of *habeas corpus.* Filed June 12, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

9 In the Circuit Court of the United States, Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes Geo. Nerton, sheriff of the county of Clarke, State of Washington, by his attorney, C. D. Bowles, and demurs to the petition filed in the above-entitled cause for the following reason, to wit:

That the facts set forth in said petition do not state facts sufficient to constitute a cause for the relief prayed for, to wit, the issuance of a writ of *habeas corpus.*

C. D. BOWLES,
Attorney for Geo. Nerton and Prosecuting Attorney of the State of Washington for the County of Clarke.

UNITED STATES OF AMERICA, } ss:
District of Washington, }

I, C. D. Bowles, do hereby certify that I am a regularly admitted and practicing attorney in the circuit court of the United States for the district of Washington, and I have examined the demurrer herein set forth and that the same is well founded in point of law.

C. D. BOWLES.

Endorsed: Demurrer. Filed June 13, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

10 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

In Re M. L. COOVERT on *Habeas Corpus.* #282.

Now, on this day, this cause comes on regularly to be heard upon the petition of M. L. Coovert for a writ of *habeas corpus*, and, the court having duly considered the petition and the argument of C. E. S. Wood, Esq., counsel for petitioner, and of C. D. Bowles, Esq., counsel for George Nerton, sheriff, and being now sufficiently advised, it is ordered that said petition be, and the same is hereby, granted, and the clerk of this court is directed to issue a writ of *habeas corpus*, addressed to George Nerton, sheriff of the county of Clarke, State of Washington, returnable at Seattle June 22, 1893, at the hour of ten o'clock a. m.

11 In the Circuit Court of the United States for the District of Washington, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Habeas Corpus; Return to the Writ.

To the circuit court of the United States for the district of Washington:

George Nerton, sheriff of Clarke county, State of Washington, to whom the within writ is directed, has now and here before the court the body of M. L. Coovert, therein named, as thereby commanded; and I, the said George Nerton, do hereby certify that the cause of the arrest and detention of said M. L. Coovert is a warrant of commitment to me directed, issued by the Honorable E. A. Wiswall, judge of the superior court for the State of Washington, in the county of Clarke, sitting as committing magistrate, a copy of which warrant of commitment is hereto annexed, marked Exhibit No. 1, and made a part hereof; which said warrant was issued in the manner and under the facts and circumstances and for the purpose set forth in the petition of the said M. L. Coovert herein.

GEO. NERTON,
Sheriff of Clarke County, State of Washington.

12 STATE OF WASHINGTON, } ss:
County of Clarke, }

To the sheriff of Clarke county:

Whereas M. L. Coovert, of Clarke county, has been brought before the superior court in and for said county, charged, on the oath of C. D. Bowles, with having on the 9th day of June, 1893, in said county, committed the offense of selling cigarettes; and in the progress of the trial of said charge it appearing to the court that the said M. L. Coovert has been guilty of the offense of selling cigarettes, committed at the time and place aforesaid; and whereas the said —— has failed to give bail in the sum of — dollars for his appearance to answer at the next session of the superior court, as required by the court: Therefore, in the name of the State of Washington, you, the said sheriff, are hereby commanded to receive the said M. L. Coovert into your custody and in the jail of your county and him there safely keep until he be discharged by due course of law.

Witness my hand and the seal of said court this 9th day of June, 1893.

H. R. CAPLES,
County Clerk and Clerk of the Superior Court.

13 UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

In the Matter of M. L. COOVERT on *Habeas Corpus.*

The President of the United States of America to George Nerton, sheriff of the county of Clarke, Washington, Greeting:

You are hereby commanded that you have the body of M. L. Coovert, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the ninth judicial circuit, district of Washington, at the court-room of said court, in the city of Seattle, on the 22nd day of June, 1893, at 10 o'clock a. m., to do and receive what shall then be considered in the premises; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the 117th.

A. REEVES AYRES, *Clerk,*
[SEAL.] By R. M. HOPKINS, *Deputy Clerk.*

Endorsed: Writ of *habeas corpus* and return thereto. Filed on return, this 22d day of June, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

14 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now comes M. L. Coovert, petitioner, by C. E. S. Wood, his solicitor, and on the return of the sheriff to the writ moves the court for an order discharging the petitioner.

C. E. S. WOOD,
Solicitor for M. L. Coovert.

Endorsed: Motion to discharge petitioner. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

15 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

Ex Parte: M. L. COOVERT.

Petition for Writ of Habeas Corpus.

Now, at this time, comes on this cause to be heard upon the petition of M. L. Coovert, duly filed in this court, praying for the issuance of the writ of *habeas corpus.*

And upon the demurrer to said petition, duly filed by George Nerton, sheriff of Clarke county, Washington, and upon the evidence and exhibits submitted with said petition, and upon the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893, and upon the return of George Nerton, sheriff of Clarke county, State of Washington, to said writ; and the motion to discharge the petitioner and the body of M. L. Coovert in the foregoing writ of *habeas corpus* mentioned being brought before the court at the time and the place in said writ named, and the return thereto being read, and the petitioner appearing by Mr. C. E. S. Wood, his solicitor, and moving the court for his discharge, and the sheriff of Clarke county, George Nerton, appearing by C. D. Bowles, his solicitor, and the court having considered the said petition and demurrer thereto, the exhibits, the writ of *habeas corpus* and the return thereto, and the motion to discharge the petitioner, and having heard the argument in the premises and being fully advised, and it appearing to the court that the facts and circumstances are not sufficient to justify the imprisonment of the said M. L. Coovert and no sufficient cause for the detention of the said M. L. Coovert appearing, it is hereby—

Ordered, adjudged, and decreed that the said law of the
16 State of Washington prohibiting the sale of cigarettes and referred to in the petition is in contravention of article I of section 8 of the Constitution of the United States and null and void in so far as it prohibits or attempts to prohibit the selling, giving, or furnishing to any one by the importer of a box of packages of paper-wrapped cigarettes, each package containing ten paper-

wrapped cigarettes, each enclosed in paper and tin-foil wrappers, each bundle or package having the U. S. internal revenue stamp and the number of manufacturing district and State, which box was received by the importer packed in a wooden packing case or carton, and said carton packed with others in a common pine shipping case, and that the said M. L. Coovert be by said George Nerton, sheriff of Clarke county, forthwith discharged from imprisonment and detention for the cause as in said petition aforesaid.

And it is further ordered, adjudged, and decreed that the said M. L. Coovert, petitioner, shall enter into a recognizance in the sum of two hundred and fifty ($250.00) dollars with the clerk of this court, with one or more sureties, for his appearance to answer the judgment of the appellate court in the premises.

C. H. HANFORD, *Judge.*

Dated this 22nd day of June, 1893.

Endorsed: Judgment. Filed June 22, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

17 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. Coovert for a Writ of *Habeas Corpus.* } Petition on Appeal.

Comes now the State of Washington, by the attorney general, and, considering itself aggrieved by the order of the above-entitled court in the above-entitled proceeding, of date June 22nd, 1893, discharging the said M. L. Coovert from the custody of the sheriff of Clarke county upon the writ of *habeas corpus* heretofore sued out by him, doth hereby appeal from the said order of said court heretofore made, as aforesaid, to the Supreme Court of the United States, and prays that this appeal be allowed, and that a transcript of all the proceedings and papers upon which said order was made, duly authenticated, may be transmitted to the said Supreme Court of the United States.

W. C. JONES,
Attorney General for the State of Washington.

Dated this 23 day of June, 1893.

18 In the Circuit Court of the United States for the District of Washington, Ninth Circuit, Northern Division.

In the Matter of the Application of M. L. Coovert for a Writ of *Habeas Corpus.* } Order on Appeal.

Now, on this 23rd day of June, A. D. 1893, comes the State of Washington, by W. C. Jones, Esquire, attorney general for the said State, and prays that an appeal may be allowed to the Supreme Court of the United States from the order heretofore made in this court in the above-entitled cause on the 22nd day of June, A. D. 1893, discharging one M. L. Coovert from the custody of the sheriff

of the county of Clarke, State of Washington, and that all the papers, proceedings, and documents relating to said cause may be transmitted by copy thereof, duly authenticated, to the Supreme Court of the United States next to be holden.

And the court being fully advised in the premises, and the said M. L. Coovert appearing in open court by J. C. Flanders, Esquire, his attorney—

It is ordered that said appeal be, and the same is hereby, allowed.

Further ordered that certified copies, duly authenticated, of all papers, documents, and proceedings in said cause be transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on said appeal be fixed at the sum of five hundred dollars.

Done in open court this 23rd day of June, A. D. 1893.

C. H. HANFORD,
District Judge, Presiding in said Circuit Court.

Endorsed: Order allowing appeal. Filed June 23, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

19 In the Circuit Court of the United States for the Ninth Circuit, District of Washington, Northern Division.

Ex Parte: M. L. COOVERT. On Petition for Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA, }
District of Washington, County of King, } ss:

Know all men by these presents that we, M. L. Coovert, of Vancouver, in the State of Washington, as principal, and G. H. Heilbron, of Seattle, in the State of Washington, as surety, are held and firmly bound unto the clerk of the circuit court of the United States for the district of Washington in the penal sum of two hundred and fifty ($250.00) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Signed with our hands and sealed with our seals this 31 day of July, 1893.

The condition of the foregoing obligation is such that whereas the said M. L. Coovert, principal above named, was on the 9th day of June, 1893, arrested by George Nerton, sheriff of the county of Clarke, in said State, at Vancouver, in said county and State, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of the State of Washington for said county of Clarke, sitting and acting as a committing magistrate, for an alleged violation by said Coovert of a certain law of the said State of Washington declaring it — be unlawful for any person or
20 persons whatever to manufacture, buy, sell, give, or furnish to any one any cigarettes, cigarette paper, or cigarette wrapper, it being charged that the said Coovert had sold to one C. M. Mc-

Donald a package of cigarettes consisting of a box of packages of paper-wrapped cigarettes, each package containing ten paper-wrapped cigarettes, each enclosed in paper and tin-foil wrappers, packed in a wooden packing case, and said case being packed with others in a common pine shipping case, which said package was shipped to said Coovert by the American Tobacco Company from the State of Oregon to the State of Washington; all as more particularly set forth in the petition of the said M. L. Coovert, heretofore filed herein, for a writ of *habeas corpus;* and

Whereas, on the 22nd day of June, 1893, said cause was duly heard in this court on a demurrer to the petition and on the return to the writ of *habeas corpus* issued out of this court on the 13th day of June, 1893; and

Whereas, in said cause, on the 22nd day of June, 1893, an order was duly made and entered discharging the said M. L. Coovert from the detention and imprisonment complained of in said petition as aforesaid; and

Whereas by said order of the 22nd day of June, 1893, it was ordered and required that the said M. L. Coovert should enter into a bond in the sum of two hundred and fifty ($250.00) dollars, with one or more sureties, for his appearance to answer the judgment of the appellate court herein:

Now, therefore, if the said M. L. Coovert shall appear and
21 answer the judgment of the appellate court in the premises and abide by and obey such judgment or order as the appellate court may render or make or cause to be rendered or made by the circuit court of the United States above named, then this obligation to be void; otherwise to remain in full force and virtue.

M. L. COOVERT. [SEAL.]
G. H. HEILBRON. [SEAL.]

Signed, sealed, & delivered in presence of—
L. B. STEDMAN.

Taken and acknowledged before me this 31st day of July, 1893.
R. M. HOPKINS,
Deputy Clerk U. S. Circuit Court, District of Washington.

UNITED STATES OF AMERICA, }
District of Washington, County of King, } ss:

G. H. Heilbron, being first duly sworn, deposes and says that he is the surety named in the foregoing bond; that he is not a sheriff, clerk of court, attorney-at-law, or any other officer of any court in the State of Washington; that he is a citizen, resident, and freeholder in said State of Washington, and is worth at least the sum of two hundred and fifty ($250.00) dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

G. H. HEILBRON.

Subscribed and sworn to before me this 31 day of July, 1893.

L. B. STEDMAN,
Notary Public in and for the State of Washington,
Residing at Seattle, King County, in said State.

Endorsed: Bond. Filed Jul- 31, 1893, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

22 United States Circuit Court for the District of Washington.

In Re M. L. COOVERT, *Habeas Corpus.* # 282.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor for petitioner in the above-entitled cause.

C. E. S. WOOD, *Solicitor,*
Of Williams & Wood, Att'ys.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk; R. M. Hopkins, deputy clerk.

23 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as attorney for Geo. Nerton, sheriff, in the above-entitled cause.

C. D. BOWLES,
Pros. Att'y for the State of Washington, Clarke County,
and Attorney for Geo. Nerton, Sheriff.

Endorsed: Præcipe for appearance. Filed June 12, 1893. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy clerk.

24 United States Circuit Court for the District of Washington.

Ex Parte: M. L. COOVERT.

Præcipe for Appearance.

To the clerk of the above-entitled court:

You will please enter my appearance as counsel & solicitor for appellant in the above-entitled cause.

W. C. JONES, *Att'y Gen'l.*

Endorsed: Præcipe for appearance. Filed June 23, 1893. A. Reeves Ayres, clerk; R. M. Hopkins, deputy clerk.

25 In the Circuit Court of the United States, District of Washington, Northern Division, Ninth Judicial Circuit.

Ex Parte: M. L. COOVERT on *Habeas Corpus.*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, ninth judicial circuit, do hereby certify the foregoing twenty-four typewritten pages, numbered from one to twenty-four, inclusive, to be a full, true, and correct copy of the record and of all the proceedings had in the above and therein entitled cause, and that the same constitutes the transcript of the record upon appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 31st day of July, A. D. 1893.

{ Seal United States Circuit Court, District of Washington, Northern Division. }

A. REEVES AYRES,
Clerk U. S. Circuit Court for the District of Washington,
By R. M. HOPKINS,
Deputy Clerk.

Endorsed on cover: Case No. 15,566. Washington C. C. U. S. Term No., 1182. The State of Washington, appellant, *vs.* M. L. Coovert. Filed April 3d, 1894.

Office Supreme Court, U. S.
FILED.
APR 3 1894
JAMES H. McKENNEY,
CLERK.

FILED.
SEP 25 1893
JAMES. H. McKENNEY.
CLERK.

164-702

Nos. 1175 - 1182.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

IN THE MATTER OF M. L. COOVERT,

Habeas Corpus.

BRIEF ON BEHALF OF THE STATE OF WASHINGTON, APPELLANT.

W. C. JONES,
Attorney General.

O. C. WHITE, STATE PRINTER.

Filed this ..... *day of* ....., *189*.....

..... *Clerk.*

IN THE

SUPREME COURT

OF THE

UNITED STATES.

IN THE MATTER OF M. L. COOVERT,

Habeas Corpus.

BRIEF ON BEHALF OF THE STATE OF WASHINGTON, APPELLANT.

W. C. JONES,
Attorney General.

OLYMPIA, WASH.:
O. C. WHITE, . . STATE PRINTER.
1893.

STATEMENT OF THE CASE.

The legislature of the State of Washington, by an act approved March 7, 1893, prohibited the manufacture and sale of cigarettes within the state.

The petitioner, in disregard of this law, made eight separate and distinct sales of cigarettes, each in quantity and mode of sale slightly differing from the other sales.

Being arrested and held to bail for each offense, he applied to the Honorable C. H. Hanford, judge of the United States district court for Washington, to be discharged on a writ of *habeas corpus*.

These proceedings were instituted for the purpose of securing an early decision from this honorable court on the questions presented by the record, and for the purpose of facilitating the hearing and determination of these questions a writ was granted *pro forma* in each case, and from the action of the court in the premises the State appeals.

The petitions filed in the several cases are substantially identical, the language descriptive of the sale only differing slightly to set forth the varying circumstances under which the sale was made.

The petition in the second series is as follows:

"TO THE HONORABLE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

"*Ex parte* M. L. COOVERT.

"Your petitioner, M. L. Coovert, complains and shows to the court as follows:

"That he is a citizen and resident of the State of Washington, and that he is unjustly and unlawfully detained and imprisoned by George Nestor, sheriff of the county of Clarke, State of Washington, at Vancouver, in the county of Clarke, and State of Washington, by virtue of a warrant of commitment issued by E. A. Wiswall, judge of the superior court of Washington for Clarke county, under the following circumstances:

"Your petitioner is a citizen of the United States, and so was at the time of his arrest, and was and is a citizen of the State of Washington, and at the time of the grievance herein complained of was and is engaged in the business of a retail tobacco dealer, in the city of Vancouver, county of Clarke, and State of Washington.

"That while so engaged in conducting his business as said retail tobacco dealer he was, on the 9th day of June, 1893, arrested by the sheriff of Clarke county, State of Washington, one George Nestor, by the order of and upon a warrant issued by the Honorable E. A. Wiswall, sitting and acting as judge of the superior court of the State of Washington for the county of Clarke, a copy of which warrant is hereto attached, marked 'Exhibit No. 1,' and which your petitioner prays may be considered as a part of this petition, the same as if it was expressly incorporated in it. And he ever since has been kept in confinement and under arrest, and now is under arrest as aforesaid and restrained of his liberty upon the following charges: Violation of the following law of the State of Washington:

"'SECTION 1. That it shall be unlawful for any person or persons whatsoever to manufacture, buy, sell, give or furnish to any one cigarettes, cigarette paper or cigarette wrapper.

"'SEC. 2. That whosoever manufactures, buys, sells, gives or furnishes to any person or persons cigarettes, cigarette paper or cigarette wrapper shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned in jail not exceeding six months, or both, for each offense.

"'SEC. 3. This act shall be liberally construed to the end that its object shall be enforced.

"'Sec. 4. All laws or parts of laws in conflict with the provisions of this act are hereby repealed.'

"And upon the affidavit, of which a copy is hereto attached, and marked as 'Exhibit No. 2,' and which your petitioner expressly

makes a part of this petition, the same as if incorporated in it, and prays that it may be so considered.

"And that immediately upon the arrest of your petitioner, he was taken before the said Honorable E. A. Wiswall, sitting and acting as judge of the superior court as aforesaid, and as a committing magistrate. That before said magistrate testimony was given by C. L. McDonald and G. W. Stapleton as follows: That your petitioner has sold to C. L. McDonald a package of cigarettes, marked 'Duke's Cameo Cigarettes,' being ten paper wrapped cigarettes enclosed in slide pasteboard box, with the name of the manufacturer, brand of cigarettes and number of manufacturing district and state printed on it and number of cigarettes, with the caution notice, required by the laws of the United States, printed on the side of said box, and the United States internal revenue stamp for ten cigarettes pasted across the end of said box. And the said package so sold by your petitioner was produced before the committing magistrate as evidence, and is herewith produced as 'Exhibit No. 3' of this petition.

"The aforesaid facts your petitioner admits to be true The said cigarettes were consigned from Oregon for sale on commission to your petitioner by the American Tobacco Company, doing business in the State of New York, and said cigarettes were manufactured in North Carolina, and were shipped to your petitioner in pasteboard boxes, containing fifty such packages exactly similar to said 'Exhibit 3.' That said pasteboard boxes are called 'cartons' by the trade, and are used simply for the purpose of making convenient parcels of the packages of cigarettes for enumeration and handling at the factory, and to protect the cigarette packages when in storage, and one of such 'cartons' is herewith produced as 'Exhibit No. 4' of this petition, and is more particularly described as follows: A loose top unsealed box with name of manufacturer and brand of cigarettes printed upon it. Such cartons are of no invariable size, but are and will be made in any size desired by dealers for shipment to them.

"That said cartons were shipped to your petitioner by said American Tobacco Company from the State of Oregon, enclosed in common pine shipping cases, being merely packing cases for the protection and safety of the goods in transportation; and that heretofore, to wit, April 6, 1893, the honorable the commissioner of internal revenue for the United States decided that such a package as said 'Exhibit 3,' containing a statutory quantity of cigarettes and properly stamped and canceled, and bearing the caution label and number of the manufacturing district and state, and the number of cigarettes contained therein, was an original package, as contemplated by United States law and regulations, and that the repacking of said packages in additional coverings of wood, paper, etc., was optional with the manufacturer. A true copy of the letter of

said commissioner, announcing such decision, is hereto attached as 'Exhibit No. 5,' which your petitioner prays may be considered as a part of this petition, to the same effect as if incorporated in it.

"That your petitioner is advised by counsel learned in the law that his detention is unlawful, as being in contravention of the constitutional provision of the United States contained in the fourteenth amendment to the constitution of the United States, section 1. That said detention is also unlawful as being in contravention of article 1, section 8, of the constitution of the United States, and that said law under which your petitioner was arrested and is now detained is invalid, as contrary to the provisions of the constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and deprives your petitioner of liberty and property without due process of law, and also that its effect is to prohibit and regulate commerce among the several states.

"And your petitioner claims that said law is invalid in the premises, and that he is held without jurisdiction or authority.

"Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said George Nestor, sheriff of the county of Clarke in the State of Washington, may issue in his behalf, so that your petitioner may be forthwith brought before this court to do, submit to and receive what the law may require.

"M. L. COOVERT, *Petitioner*.

"C. E. S. WOOD, *Solicitor for Petitioner*."

The petition in the first of the series of cases is identical with the foregoing, except that the sale was of a box of ten paper wrapped Vanity Fair cigarettes, which was shipped to petitioner, together with 149 other such boxes packed in a pine shipping case, no "carton" being used.

In the third case the sale was of ten paper wrapped Pet cigarettes, wrapped as a bundle in an oiled paper and tin foil wrapper. These bundles were packed in cartons containing fifty each, and the cartons shipped to petitioner in pine shipping cases.

In the fourth case the sale was of a pasteboard box, containing ten tobacco wrapped cigarettes, marked "Social

Whiffs," which boxes were packed in wooden cartons and shipped to petitioner in pine shipping cases, etc.

The fifth case is substantially identical with that presented by the above petition, except that the sale was direct instead of being made on commission.

In the sixth case the sale was of ten paper wrapped cigarettes inclosed in a pasteboard box, which box was packed with nineteen similar boxes in a carton, and the cartons were shipped to the petitioner in a bundle wrapped with paper and bound with cord.

In the seventh case the sale was of five packages, each containing ten Vanity Fair cigarettes, the five packages being enclosed in a slide pasteboard box, which box was packed in a carton containing twenty such packages, and the cartons were shipped to petitioner in pine shipping cases.

In the eighth case the sale was of a box of fifty packages, each containing ten paper wrapped Pet cigarettes (probably a carton such as is described in No. 3), and the cartons were shipped to petitioner in wooden packing cases.

All the sales were direct sales except the one described in the petition above set forth, in which the sale was on commission.

It thus appears from the foregoing that the petitioner is a retail tobacco dealer, doing business at Vancouver, in the State of Washington; that in each case a considerable quantity of cigarettes was shipped to petitioner from with-

out the state by the American Tobacco Company; and that petitioner in each case sold at retail a portion of such shipment, the original shipping case or package in which the goods were shipped being broken.

In seven of the cases the original shipping case or package was a pine box, and in one case it was a paper wrapper bound with cord.

In seven of the cases the original package in which the cigarettes were shipped contained a number of smaller boxes of variable size, made of pasteboard or wood, called "cartons;" while in the first case it appears that no carton was used, but one hundred and fifty small boxes, each containing ten cigarettes, were shipped to petitioner in a pine box, and he sold one of the small packages containing ten cigarettes.

In the first six cases the sale was of a package of ten cigarettes.

In the seventh case, five packages, each containing ten cigarettes, all enclosed in a pasteboard box, were sold; while in the eighth case, a pasteboard "carton" containing fifty packages of ten cigarettes, was sold. But in every case the package in which the goods were shipped into the state was broken open, and a portion only of the contents disposed of at retail.

It is apparent from the ingenuity displayed in slightly varying the circumstances attending the sale in each case, that the American Tobacco Company is desirous of secur-

ing the advice of this honorable court as to how it may violate the laws of the State of Washington with impunity, and still enjoy the protection of the constitution and laws of the United States under the federal power to regulate commerce between the states, and that it is anxious to know which of these sales, if any, was the sale of an "original package" within the scope of the doctrine announced in *Leisey v. Hardin*, 135 U. S. 100.

The only question raised in the court below was that each of these sales was the sale of an "original package" of imported goods, and that, therefore, the laws of the state could not interfere with it.

But if we have correctly apprehended the doctrine established by the case referred to, petitioner has signally failed in each case to bring himself within its protection.

The utmost limit to which the doctrine was carried in that case was, that the citizen of one state had the right to import any legitimate subject of commerce into another state and there dispose of it by himself or agent in the original package of transportation unbroken and as a whole.

The doctrine of that case is clearly and succinctly stated in the case of *State v. Chapman*, 47 N. W. R. 416, as follows:

"The defendants, however, to avail themselves of the immunity of these decisions, and the doctrine and rules declared, must show — (1) That they are foreign importers or the agents of foreign importers of beer or liquors; (2) that as such agents they received an importation of beer or liquors from another state or foreign country; (3) that they are, as such importers or agents, selling this

importation by the original, unbroken package in which it was imported."

Measured by the above rule, the petition in each case falls very far short of stating facts bringing the petitioner within the provisions relating to interstate commerce.

In only one of these cases (viz., the one in which the petition is set forth), is there any pretense that the sale was made by petitioner, who is a citizen of Washington, otherwise than directly on his own account. And we submit that the recital that the goods "were consigned from Oregon for sale on commission," found in the second petition of the series, is not sufficient as an allegation that petitioner sold the goods as the agent of the foreign importer; nor does it negative the positive averment contained in that petition that he was arrested while conducting his business of a retail tobacco dealer, and the allegation that testimony was given that he had sold a package of cigarettes to C. L. McDonald, which allegations clearly imply not only that the evidence established the fact that he had sold them on his own account, but that the sale was in fact so made.

Petitioner has thus failed utterly to bring himself within either of the first two conditions above announced, and he has made no attempt to bring himself within the third condition, unless the allegation that the honorable commissioner of internal revenue has decided that a five cent package of cigarettes is an "original package" so far as his office is concerned, can be considered such an attempt. But as we are unable to see how the decision of the com-

missioner of internal revenue, who has nothing whatever to do with interstate commerce, can have any bearing on this case, we refrain from any further allusion to it.

The cases of *Collins v. Hills*, 41 N. W. R. 571, and *State v. Coonan*, 48 N. W. R. 921, both from the supreme court of Iowa, would seem to lend some countenance to petitioner's contention that the packages sold by him were "original packages" within the rules relating to interstate commerce.

In the first of those cases the court held that where bottles of whisky were imported from without the state packed in barrels, and the consignee took the bottles from the barrel and sold them, without opening the bottles or interfering with their seals, such a sale was the sale of an "original package" within the protection of the regulations relating to interstate commerce.

This case, however, was decided before the case of *Leisey v. Hardin*, *supra*, and therefore it cannot be contended that the court of Iowa was influenced in its decision by the latter case, or was attempting to carry out the doctrine announced in that case.

The second case presents substantially the same features, and the court followed the decision in the first case rather than the decision of this court. In the latter case above cited the court says:

"That the separate bottles were original packages—that is, in the form in which they were put up by the shipper for sale—we think there can be no doubt. *At least such has been the holding of this court. Collins v. Hills,* 77 Iowa, 181 (41 N. W. Rep. 571)."

as in *Re Harmon*. In that case the court used the following language:

"In this case, the bottles separately wrapped in paper were shipped in a box and sold singly. Merely labeling each bottle 'Original Package' did not make it one, if it was not really an original package. The term 'to pack,' in its ordinary signification, especially when used in reference to carriage, means to place together and prepare for transportation, as to make up in a bundle or bale, and 'package' is a bundle or bale made up for transportation. It may consist of a single article; but, when separate articles are placed together, and prepared for transportation in a bundle or bale, or box, or other receptacle, they do not form as many separate and distinct packages as there are articles, though they may be wrapped separately. The case or box or bale in which separate articles are placed together for transportation constitutes the 'original package' in the commercial sense. It appears from the bill of lading that the transportation was not of the bottles as distinct and separate packages, but of a specified number of bottles of liquor contained in boxes, each box indicated by marking thereon the number and sizes of the bottles contained therein. *Had the boxes been covered and nailed, or otherwise secured, it would not have admitted of serious question that they formed the original packages.* The purpose of securing a box with a fastened cover is the protection of its contents against loss, by theft, or otherwise, and for convenience in handling. A distinction between a box securely covered and one uncovered, in respect to its character and status as an original package, is a distinction without a difference, unsupported by principle or reason. The mode of shipment adopted was manifestly a mere contrivance to evade the consequences of the violation of the state prohibition law, under the pretext of interstate commerce, which does not entitle appellant to the protection afforded by the federal constitution to importers and sellers of original packages."

The case of *State v. Chapman* has been heretofore alluded to, and fully sustains the doctrine of the above cases.

In re Beine, each bottle was shipped by the importer to his agent separately in a box by itself, and not packed in any other shipping case with others, and the court very properly held it to be an original package.

It is apparent from these cases that the courts, both state and federal, have understood the interstate commerce regulations very differently from what they were construed by the supreme court of the State of Iowa. If the rule adopted by the latter state were held to be the correct one, it is apparent that the several states of the Union would be completely deprived of any police power to protect the health or morals of their citizens. And it would seem from every consideration of public policy, reason and safety that the power of the state to execute its police regulations should not be interfered with any further than is necessary to carry out the doctrine heretofore announced by this court, and that that doctrine should not be extended to the limit contended for by the petitioner in these cases.

Very respectfully submitted. W. C. JONES,

Attorney General.

From which it appears that the court was influenced rather by a desire to be consistent with its prior holding than to announce the rule established by this court.

The decision of the supreme court of Iowa in those cases is not justified by anything found in the case of *Leisey v. Hardin*, and is violently at variance with all of the following cases:

Smith v. State (Ark.), 15 S. W. R. 882.
Re Harmon, 43 Fed. 372.
Keith v. State (Ala.), 8 Southern, 353.
State v. Chapman (S. D.), 47 N. W. R. 411.
Re Beine, 42 Fed. 545.

In *Smith v. State* the supreme court of Arkansas, construing the rule established by this court in the case of *Leisey v. Hardin*, uses the following language:

"The rule established by the supreme court of the United States, in such cases, goes no further than this: 'The importer may sell the article imported in the form and shape in which it was imported, without impediment from state laws.' The state's undeniable right to tax and regulate can be interfered with only in so far as the prohibition of the constitution of the United States necessarily applies, and that requirement is satisfied when the importer is offered a fair opportunity to sell his import in the case or package in which it is imported, at the place where the transportation terminates. When he breaks the package and distributes the contents, he has so acted upon the import as to make it a part of the common mass of property of the state into which it is imported, and it becomes subject to the unimpeded control of the state. These conclusions are deducible from the language of Chief Justice Marshall and of the other judges who delivered the opinions of the supreme court of the United States in the earliest cases upon the question, and since has been uniformly accepted as the settled law by the federal and state tribunals."

In that case bottles of liquor were shipped from Tennessee into the State of Arkansas in boxes, some of which were open and some closed. The liquors were taken from the boxes and sold in the original bottles in which they were shipped. The court held that the box and not the bottle was the original package, and that it was immaterial whether the box was closed or open.

In the case of *Re Harmon*, bottles of liquor were shipped from Tennessee into Mississippi. They were closely packed in boxes, which belonged to the express company, and were not covered. The boxes were marked "To be returned." The court, in holding that the boxes in which the bottles were packed constituted the original packages, uses the following language:

"I am satisfied that these were mere subterfuges, resorted to by Jordon and the relator to avoid the penalties of the state law, and that it made no difference whether there were paper boxes around each bottle or not; if each was a separate package, within the provisions of the constitution of the United States, as construed by the supreme court of the United States, with the box or wrapper, it was equally so without it. Nor does it make any difference to whom the boxes belonged. Those bottles were closely packed together in the boxes by Jordon, the shipper, and in that form shipped to Sardis, and in that way they were kept by relator until sold and taken out, one bottle at a time. It was, in other words, a retail saloon. I am satisfied that the whisky in the box, although in separate bottles, for the convenience of the trade in this retail saloon, was but one package within the meaning of the interstate clause of the constitution as construed by the supreme court."

The facts in *Keith v. State* were substantially the same

169-702

OCT 30 1896

Supreme Court of the United States.

OCTOBER TERM, 1896.

Nos. 90, 91, 92, 93, 94, 95, 96, and 97.

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

STATEMENT IN BEHALF OF APPELLEE.

JOSEPH H. CHOATE,
For Appellee,
By CHARLES C. BEAMAN.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

Nos. 90 to 97.

THE STATE OF WASHINGTON, APPELLANT,

vs.

M. L. COOVERT.

STATEMENT IN BEHALF OF APPELLEE.

The legislature of the State of Washington, by an act approved March 7, 1893 (which is chapter 51 of the Session Laws of 1893, page 82), prohibited the manufacture and sale of cigarettes within that State. (See the act quoted in full below.)

The petitioner, Coovert, made eight separate and distinct sales of cigarettes, each sale differing in some respects from the others.

Being arrested and held to bail for each sale (eight in all), he applied to the Honorable C. H. Hanford, judge of the United States district court for Washington, to be discharged on a writ of *habeas corpus*.

The petitions filed in the several cases are substantially identical, the language descriptive of the sale in each case differing slightly to set forth the varying circumstances under which the sale was made.

The ground of the petition was that said act of March, 1893, was unconstitutional, in so far as it affected the sales made by the petitioner under the circumstances thereof, because in conflict with the provisions of article 1, section 8, of the Constitution of the United States.

The State of Washington demurred to the petition for the writ of *habeas corpus*, and, after argument, the court discharged the petitioner, and the State appealed to this Court.

The transcript of the record and a printed brief of the attorney general of the State of Washington in behalf of the appellant were filed in this Court on April 3, 1894.

Since the filing of the transcript of the record and said printed brief for the appellant, to wit, on March 15, 1895, there was approved an act of the legislature of the State of Washington entitled "Relating to sale of cigarettes—An act for the better protection of the public health in relation to the manufacture and sale of cigarettes" (which is chapter 70 of the Session Laws of 1895, page 125). (See the act quoted in full below.)

While the act of 1893, under which Coovert was arrested and detained, made it unlawful for any one to sell cigarettes, the act of 1895 provided for the licensing of sales of cigarettes at retail and wholesale.

It is considered by us that the act of 1895 repealed and superseded the act of 1893 by reason of its inconsistent provisions, policy, and penalties. If we are right in this posi-

tion, there is no real question now involved in these appeals, but they present simply questions in the nature of a moot court question; for if the judgment should be reversed and the writ dismissed Coovert could not be tried or punished under the act of 1893, because it is repealed, nor under the act of 1895, because it was passed after the sales complained of were made. Having this view of the law and understanding that the appeals were practically abandoned, counsel for appellee, Coovert, have not filed any brief, expecting the attorney general of Washington would withdraw the appeals or file a consent to their dismissal.

Neither the counsel for appellee nor the court having heard from the attorney general of Washington in the premises, this statement is filed with the Court, and it is suggested that the Court, of its own motion, dismiss the appeals because of the repeal of the law upon which the opinion of the Court is sought. If the Court shall not dismiss the appeals, the counsel for appellee respectfully ask, in view of the circumstances stated herein and the importance of the questions involved in these cases, that they be continued and the appellee given opportunity to file briefs and make oral argument.

JOSEPH H. CHOATE,
For Appellee, Coovert,
By CHARLES C. BEAMAN.

OCTOBER 29, 1896.

APPENDIX.

CHAPTER LI.

(H. B. No. 236.)

IN RELATION TO CIGARETTES.

AN ACT making it unlawful for any person or persons to buy, sell or give away, or manufacture cigarettes or cigarette paper and providing the punishment for the violation thereof.

Be it enacted by the legislature of the State of Washington:

SECTION 1. That it shall be unlawful for any person or persons whomsoever, to manufacture, buy, sell, give or furnish to any one cigarettes, cigarette paper or cigarette wrapper.

SEC. 2. That whoever manufactures, buys, sells, gives or furnishes to any person or persons cigarettes, cigarette paper, or cigarette wrapper, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars, or be imprisoned in jail not exceeding six months or both for each offense.

SEC. 3. This act shall be liberally construed to the end that its object shall be enforced.

SEC. 4. All laws, or parts of laws in conflict with the provisions of this act are hereby repealed.

Approved March 7, 1893.

CHAPTER LXX.

(H. B. No. 558.)

RELATING TO SALE OF CIGARETTES.

AN ACT to provide for the better protection of the public health in relation to the manufacture and sale of cigarettes.

Be it enacted by the legislature of the State of Washington:

SECTION 1. Hereafter it shall be unlawful for any person or persons to sell cigarettes made of tobacco in combination with any substance or material, covering or wrapper, or containing any substance or material other than tobacco, until such person or persons shall have obtained a license therefor.

SEC. 2. The applicant for such license shall make oath that, to the best of his knowledge and belief, the cigarettes intended to be sold pursuant to said license do not contain any injurious drug, narcotic or other deleterious matter, and that he will not knowingly sell any cigarettes containing any such injurious drugs, narcotic or other deleterious matter.

SEC. 3. The board of county commissioners of any county, or the board of aldermen or city council of any incorporated city, as the case may be, are hereby authorized to issue licenses for the sale of cigarettes, on written application made to such board or council, in the manner hereinbefore provided, indorsed by not less than five reputable citizens, resident of the city or county wherein the applicant resides, or has a place for the transaction of business. Every person so licensed shall pay a fee of ten dollars ($10) if sales are to be made at retail, and twenty-five dollars ($25) if sales are to be made by wholesale, for the right to sell cigarettes for the period of one year from the date of such license. Licenses may be granted for any fractional part of a year at the same rate proportionately; but no license granted to

one party shall be transferable or assignable: *Provided*, That no license shall be granted for a shorter period than six months (6).

SEC. 4. All moneys derived from licenses for the sale of cigarettes shall be paid over by said board of county commissioners, board of aldermen, or city council, to the county treasurer of the county wherein the same may be granted, except in incorporated cities, when the money derived from the said licenses shall be paid into the general fund of said city.

SEC. 5. Any person selling or giving away cigarettes without a license, or selling or giving away any cigarette or cigarettes containing any injurious drug, narcotic or other deleterious matter mentioned in section two of this act, is guilty of a misdemeanor, and shall on conviction thereof be subject to a fine of fifty dollars ($50) for each offense, or be imprisoned for sixty days in a common jail or penitentiary, and any person having a license, or any person not licensed, who sells or gives away any cigarette or cigarettes, of any and every kind whatsoever, to a minor under the age of eighteen years, shall be subjected to the same penalty as herein provided.

SEC. 6. Any person selling cigarettes of any and every kind whatsoever, except in an original and full package, is guilty of a misdemeanor, and shall on conviction thereof, be subject to the same penalty as in the section last above provided.

SEC. 7. In addition to the penalty above provided for, the sale or giving away of cigarettes to a minor under the age of eighteen years, the parent or guardian of such minor or any individual or association suing in behalf or for the benefit of such minor, may prosecute, in a civil action, any person so violating this act, for the penalty of two hundred and fifty dollars ($250) and the costs of the action, one-half of which amount shall be paid to any person as his moiety share who furnished the information upon which the action

is brought and penalty recovered. Any person convicted of a violation of this act, who has a license, shall forfeit his license, and the same shall be revoked and canceled by the board or council having jurisdiction, and no license shall thereafter be granted any person whose license has been forfeited and revoked as provided by this act.

Passed the house March 9, 1895.
Passed the senate March 13, 1895.
Approved March 15, 1895.